



UNDERSTANDING AND ADMINISTERING MINNESOTA’S PARTITION FENCE LAW

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I. Minnesota's Partition Fence Law

Minnesota's Partition Fence Law¹ applies to adjoining landowners who both "produce or maintain livestock for agricultural or commercial purposes."² The statute defines livestock broadly.³ Because it only applies to landowners with livestock, town supervisors need not respond to viewing requests if one of the landowners does not have livestock.

The DNR is subject to the requirements of the partition fence law, and is required to share costs when an adjoining owner desires the land permanently fenced for restraining livestock⁴ Other local governments, however, do not appear subject to the fence law if they do not own livestock.

II. Town Options

A. Town Option Local Policy: The fence statutes allow towns to adopt a local fence law policy. Under Minn. Stat. § 344.20, eight or more landowners in a town may petition the town board for a vote on a partition fence policy. Upon such a petition, the board may draft its own policies and procedures, including enforcement procedures, for dealing with partition fences. Any such policy must be approved by a vote of the electors at an annual or special town meeting. If authorized and adopted, the local policy controls over the statutory fence law. However, the fence law still applies to fence disputes on the line between towns.

Town boards must be extremely careful in choosing to exercise this option. Whatever the board adopts will become the law for the town. As law, if it is not sufficiently clear or applied in a fair and consistent manner, it could cause more problems than would have otherwise been experienced under the statutory fence law.

B. Optional Exemption: Minn. Stat. § 344.011 allows town boards to pass a resolution exempting adjoining properties from the obligations of the fence law when those lands, when taken together, contain less than 20 acres. This exemption has been particularly important for towns with lakes and residential areas.

III. Background

The Minnesota partition fence law, which predates statehood, was established to determine who is responsible for limiting the movement of domestic livestock. Under common law, a landowner did not need to fence his or her land against the livestock of another, but the livestock owner was required to restrain his or her livestock from entering a neighbor's

¹ Minnesota Statutes Ch. 344

² Minn. Stat. § 344.03, subd. 1(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 landowners or occupants shall build and maintain a partition fence between their lands in equal shares.

³ Minn. Stat. § 344.03, subd. 1(c). For purposes of this section, "livestock" means beef cattle, dairy cattle, swine, poultry, goats, donkeys, hinnies, mules, farmed Cervidae [deer], Ratitae [flightless birds], bison, sheep, horses, alpacas, and llamas.

⁴ Minn. Stat. § 344.03, subd. 1(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.

land. With this duty in mind, the Minnesota partition fence law imposed obligations on owners of “improved land” to build and maintain “partition fences.” “Fence viewers” were tasked with administering and enforcing the law. Township supervisors are designated as fence viewers in Minn. Stat. § 344.01.

Constitutionality. Landowners have challenged the fence law, arguing that the requirement to pay half of the costs of a fence they may not need was unconstitutional. Except for some individual successes at the district court level (which are not binding in other cases), the appellate courts have upheld the constitutionality of the law.⁵ Since the fence law was amended in 2017, constitutional challenges have become less likely because the amended law is applied only if both landowners have livestock.

IV. Applying Minnesota Partition Fence Law

A. Definitions

- **Owner:** As used in this paper, owner refers to either the actual owner or the occupant of the land. The fence law indicates the obligation goes to the “owner or occupant.” This is important for purposes of providing notice.
- **Livestock:** The fence law applies only to livestock owners. The definition of livestock is broad and encompassing. It includes: “beef cattle, dairy cattle, swine, poultry, goats, donkeys, hinnies, mules, farmed Cervidae [deer], Ratitae [flightless birds], bison, sheep, horses, alpacas, and llamas.”
- **Agricultural and Commercial.** While the statute now only applies to livestock owners, it does modify that term by stating “produce or maintain” for “agricultural or commercial” purposes. There is not a definition of agricultural or commercial in the chapter.

The term “agricultural” conveys many images. The U.S. Supreme Court has said, “[T]he question as to whether a particular type of activity is agricultural is not determined by the necessity of the activity to agriculture nor by the physical similarity of the activity to that done by farmers in other situations. The question is whether the activity in the particular case is carried on as part of the agricultural function or is separately organized as an independent productive activity.”⁶ The general definition of commercial is “employed in trade; engaged in commerce,” as well as “involving the buying and selling of goods.”⁷

So, if a landowner raises four chickens, will that meet the definition of raising livestock for an “agricultural” purpose? What if the owner sells some of the eggs the chickens produced, does that meet the definition of “commercial?” Supervisors may be faced these kinds of questions as the new law is applied.

⁵ See *Petition of Bailey*, 626 N.W.2d 190 (Minn. App. 2001). Court of Appeals reaffirmed the constitutionality of the law, presuming the he adjacent property owner is benefited unless they can present evidence to the contrary.”

⁶ *Farmers Reservoir & Irrigation Co. v. McComb*, 337 U.S. 755, 760-61(1949); See also, *Farmington Tp. v. High Plains Co-op*, 460 N.W.2d 56 (Ct. App. 1990)

⁷ Black’s Law Dictionary (10th ed. 2014).

B. The Importance of Proper Notice: Because the duties of fence viewers are judicial in nature, proper notice is necessary for the viewers to have jurisdiction over a fence dispute. Failure to provide proper notice to the parties will render the viewers' proceedings **void**.⁸ The Minnesota Court of Appeals held to that rule even though it recognized that the viewers were attempting to resolve the dispute informally and that the party who did not receive notice of the viewing later admitted that the fence was in need of repair.⁹

1. Be sure to identify, as soon as possible, whether the person on the land is the owner or merely the occupant. The county auditor should be able to assist in determining the owner of record.
2. If an occupant is present, the notice by the viewers concerning the initial fence viewing should be sent to both the occupant and the owner. Failure to identify and include the proper party at the beginning of the fence proceedings could invalidate those proceedings.

About Notices Required by the Statute: The fence statute requires fence viewers to provide notices to the parties at various times. The statute, however, does not describe any specific type of notice. The fence viewers should decide how notices will be sent and be consistent in following the process they set.

Mailed notice is sufficient for the statute, but the fence viewers should ensure they send notices early enough to give the recipients fair notice of the proceedings. Certified mailed is not necessary, but may be used. Since certified mail may be refused and left undelivered, fence viewers using certified mail may want to send the notice by regular mail as well.

C. Role of Supervisors as Fence Viewers: Town supervisors play a significant role in viewing fences. Because of the statutory duties associated with viewing fences and the liability that could result from failing to properly undertake those duties, town supervisors must take care to follow the proper procedures. As with many statutorily prescribed procedures, if any step along the way is missed or done improperly, the entire process could be jeopardized.

1. **Defined:** Town supervisors are the fence viewers within the township.¹⁰ If the fence is on the line between two towns, one supervisor from each town will be the fence viewers.¹¹ In unorganized territories, the county commissioners are the fence viewers.¹²
 - a. **Duties:** The duties of fence viewers are not discretionary. If an owner properly requests the viewers to view a fence they must do so within a reasonable time.¹³ Once the process is started, the viewers must follow the statute and make their decisions within a reasonable time.

⁸ *McClay v. Clark*, 44 N.W. 255, 256 (Minn. 1890) and *Miles v. Altoff*, 373 N.W.2d 655, 658 (Minn. App. 1985).

⁹ *Rice v. Kringle*, 517 N.W.2d 606, 609.

¹⁰ Minn. Stat. § 344.01.

¹¹ Minn. Stat. § 344.14.

¹² Minn. Stat. § 344.19.

¹³ Op. Atty. Gen., 631-N, Sept. 20, 1949.

- b. **Authority:** Fence viewers have only the authority granted them by statute. Therefore, the viewers may only become involved with and decide those issues specifically given them by the statutes.
 - i. Viewers must not attempt to set boundary lines, become involved in the actual building of the fence, or make any efforts to collect money on behalf of an owner beyond those specifically stated in the statutes.
 - ii. If one of the supervisors has a direct or indirect personal interest in a fence, that person must not participate as a fence viewer to resolve a dispute regarding the fence.
- c. **Payment:** Fence viewers must be paid for their services by the person employing them.¹⁴ 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 regarding the viewing.
- d. **Liability:** A fence viewer who unreasonably fails to perform a duty required under the fence law must forfeit \$5 to the ***town and is liable to the injured party for all resulting damages***.¹⁵ Because of the potential liability, it is recommended that at least two supervisors are involved in a viewing and an accurate record of the proceedings be kept.

V. Possible Disputes

A. Must Have a Dispute: Fence viewers do not become involved in a partition fence unless there is a dispute. The law presumes landowners understand their fencing obligation under the law and will work out the details of cooperatively building and maintaining a line fence. It is only when they fail to agree that they can then petition the fence viewers to settle the dispute. If the board is properly called upon to act as fence viewers, it is very important to follow proper procedure. Failure to remain within the scope of the viewer's authority could result in significant consequences.

B. Possible Disputes: The fence law recognizes a variety of possible disputes in which the fence viewers may become involved. In each case, an aggrieved owner requesting a fence viewing and depositing a required security with the town treasurer is what triggers the duties of the fence viewers. When a request is made, the town official should ask for as much information about the dispute as possible in order to help identify the type of disputes involved. Chapter 344 recognizes the following disputes:

1. Failure to build, rebuild, or maintain a partition fence.¹⁶ Refer to **Checklist One**.

¹⁴ Minn. Stat. § 344.18.

¹⁵ Minn. Stat. § 344.17.

¹⁶ Minn. Stat. § 344.04.

2. Dispute over shares in the fence (i.e., who is responsible for which portion of the fence).¹⁷ Refer to **Checklist Two**.
3. Disagreement over the kind of fence to be built.¹⁸ Refer to **Checklist Three**.
4. Disagreements occurring when an enclosed piece of land held in common is later divided into separate parcels and one of the owners desires a fence built on the new partition line.¹⁹
5. An unpaid claim for reimbursement arising from the viewers' determination, as part of dividing responsibility in a fence, that one of the owners had voluntarily erected or otherwise become the proprietor of more than the owner's just share of the fence **before** a complaint about shares in the fence was made.²⁰
6. Request for payment of one-half of an existing fence when the adjacent owner, whose land was not previously fenced and who did not assist in the building of the existing fence, takes advantage of the existing fence. In other words, an owner has started using a fence but did not help build it so the adjacent owner is seeking reimbursement for that use.²¹
7. Failure to agree on which side of a stream or pond the partition fence is to be built. See **Appendix I**.²²

RUNS WITH THE LAND? *Minn. Stat. § 344.06 provides that once fence viewers make their decision, it can be recorded in the county "after which it is binding upon the parties and upon all succeeding occupants of the lands." Minn. Stat. § 344.16 also provides that a recorded agreement between parties runs with the land and is binding on their "heirs and assigns forever," who "shall erect and maintain fences in accordance with the divisions." The question, which is not fully addressed by the amended statute, is whether the change in Minn. Stat. § 344.03, which now applies only to livestock owners, should not apply to succeeding occupants of the land who now do not raise livestock. The matter may need to be addressed by the Legislature in the future, but the perpetual nature of the fences raises several concerns, given the changing nature of farms.*

C. Boundary Disputes: Fence disputes frequently involve disagreement over the location of the boundary line. **Viewers have no authority to set or determine boundary lines.**²³ If the boundary line is disputed, fence viewers should inform the owners, in writing, that they cannot continue with the fence proceedings until the owners resolve the boundary line dispute. Once the line is established, the owners can renew the request for the viewers to conduct the initial viewing.

D. Limited Scope: The obligations under the fence law only apply to fences built on the boundary lines between properties. Therefore, this law does not, for instance, require an

¹⁷ Minn. Stat. § 344.06.

¹⁸ Minn. Stat. § 344.02, subd. 2 & 3.

¹⁹ Minn. Stat. §§ 344.11 and 344.12.

²⁰ Minn. Stat. § 344.09.

²¹ Minn. Stat. § 344.13; *See also, Brom v. Kalmes*, 230 N.W.2d 69; *Boenig v. Hornberg*, 24 Minn. 307 (1877).

²² Minn. Stat. § 344.10.

²³ *See e.g., Jones v. Williams*, 206 N.W. 654 (Minn. 1925).

owner to build a fence along a public road that is located on the boundary line when the owner on the other side of the road desires the land fenced.²⁴

VI. Kinds of Partition Fences

A. Legal Fences: The types of fences considered legal and sufficient are listed in Minn. Stat. § 344.02, sub. 1. Most of the fences listed are a combination of woven and barbed wire. However, the last provision in the statute is a catch-all which includes “fences consisting of rails, timbers, wires, boards, stone walls, or any combination of those material, or streams, lakes, ditches, or hedges, which are considered by the fence viewers as equivalent to any of the fences listed in this subdivision.”²⁵ Since the fences made of these other materials must be equivalent to the other fences listed, it appears they can only be considered sufficient if they are as effective as the woven and barbed wire fences.

Even though courts have acknowledged broad authority on the kind of fence the fence viewers can order, fence viewers should not order construction of a fence that is significantly more costly than the four standard fence-types.

B. Disputes: If the owners cannot agree as to the kind of fence to be built, the matter must be referred to the viewers. The viewers will determine the kind of fence to be built and order it built.²⁶

C. Consistency: If land is fenced on three sides by a woven wire fence, the fence built on the remaining side must be similar in character and quality to the existing fences.²⁷ This essentially creates a right to expect the remaining side of the fence will match the existing fence.

Farmed Cervidae – Special Provisions

Minn. Stat. § 35.155, subd. 4 sets specific special requirements for fences of farmed Cervidae. The statute regulates the height, strength of fence, and sets special penalties and regulation by the Board of Animal health. When farmed Cervidae are owned by one or more of the properties at issue in a fence dispute, the fence viewers will need to order the construction or maintenance of the fence described in this statute. However, some disputes related to these fences may be resolved by the Board of Health.

²⁴ See Op. Atty. Gen. 631-A, June 22, 1956.

²⁵ Minn. Stat. § 344.02, subd. 1(e).

²⁶ Minn. Stat. § 344.02, subd. 2.

²⁷ Minn. Stat. § 344.02, subd. 3.

CHECKLIST 1: FAILURE TO BUILD OR REPAIR

Minn. Stat. §§ 344.04 - .05

Before beginning, determine if both owners raise livestock:

_____ Do both owners use their land, in whole or in part, to produce or maintain livestock for agricultural or commercial purposes?

“Livestock” means beef cattle, dairy cattle, swine, poultry, goats, donkeys, hinnies, mules, farmed Cervidae [deer], Ratitae [flightless birds], bison, sheep, horses, alpacas, and llamas.

If no, the partition fence law does not apply. Township officials do not have to be fence viewers.

If yes, then if one of the livestock owners fails to build or repair a fence as required by the fence law, the other livestock owner (the aggrieved owner) may complain to the fence viewers and request a viewing. The following outlines the steps involved in requesting a fence viewing and in conducting a viewing under Minn. Stat. §§ 344.04-05. If the dispute also involves the kind of fence to build, incorporate the steps outlined in **Checklist Three** into this procedure.

(1)___ Aggrieved livestock owner deposits the required security with the town treasurer and requests a viewing by the fence viewers. Minn. Stat. § 344.18.

(2)___ The viewers select a date and time to view the fence and then must provide notice to the parties. Minn. Stat. § 344.04.

The notice should be sent to each livestock owner. *See Appendix A* for a sample notice.

To avoid potential claims under the Open Meeting Law, notice of the viewing should also be posted at the town’s regular posting places at least five days before the viewing.

(3)___ At the designated day and time, the viewers meet and view the fence, or look into the need for a proposed fence. The viewers must determine whether an existing fence is insufficient and must be repaired or, if there is no fence, whether a new fence is necessary. Minn. Stat. § 344.04.

A written record of the proceedings should be developed and retained on file with the town.

The viewers are paid for their services from any security the township has deemed required. Minn. Stat. § 344.18.

If the kind of fence to be built is disputed, refer to **Checklist Three**.

(4)___ If the viewers find that the fence does not need to be repaired, or that a fence does not need to be built, they must make specific written findings of that fact and mail them to each livestock owner.

If the lands involved are divided by a stream or pond refer to **Appendix I** for additional information and procedures.

(5)___ If the viewers determine that the fence must be repaired or built, they must notify the delinquent livestock owner of that fact in writing and order the livestock owner to build, repair, or rebuild the fence within a specified reasonable time. The order should be sent to both livestock owners. Minn. Stat. § 344.04. *See Appendix B* for a sample order.

(6)___ The township's fees and costs are deducted from the deposited security and any excess must be returned to the depositor. Minn. Stat. § 344.18.

(7)___ If the delinquent livestock owner does not comply with the viewer's order by the specified date, the aggrieved owner may build, repair, or rebuild the fence and seek reimbursement of the costs as follows. Minn. Stat. § 344.04.

Before an aggrieved livestock owner attempts to build or repair the fence, s/he should notify the viewers of the fact that the delinquent livestock owner did not comply with the order and that he intends to build or repair the fence. One of the supervisors may want to look at the fence to confirm that the order was not followed.

The aggrieved livestock owner should be told to keep receipts and detailed records of the time and cost involved in finishing the fence. These records will assist the viewers in certifying the costs.

This automatic triggering of the aggrieved livestock owner's right to finish the fence is why the viewers must be extremely cautious when one of the livestock owners claims the boundary line is uncertain or incorrect. If the viewers issue an order, it sets in motion a series of events that could result in a suit against the aggrieved livestock owner. For instance, if the aggrieved livestock owner decides to finish the fence after the delinquent livestock owner has failed to comply with the viewers' order, and the delinquent livestock owner can establish that the fence was not built on the actual line, it could result in a trespass action against the aggrieved livestock owner or a dismissal of the aggrieved livestock owner's claim for double the fence costs.

On the other hand, there are times when a livestock owner will purposely attempt to disrupt the proceedings by disputing the boundary line even though the line has been clearly established (e.g., long standing survey markers or a new survey).

(8)___ If the aggrieved livestock owner builds or repairs the other livestock owner's portion of fence, the aggrieved livestock owner deposits the required security with the town treasurer and requests a hearing by the viewers.

(9)___ The viewers must give notice to both livestock owners indicating that a hearing will be held on-site. Minn. Stat. § 344.05.

The notice should be sent before the date of the hearing. *See Appendix C* for a sample notice. Notice should also be posted at least four days before the hearing.

- The purpose of the hearing is to: determine whether the fence is sufficient; allow both parties an opportunity to be heard; determine the cost of the fence or repair; and to give the aggrieved livestock owner a signed certificate of the viewer's decision, the cost of the fence or repair, and the viewers' fees. *See Appendix D* for a sample certificate.

 - It is important for the viewers to remember that this hearing and the issuance of the certificate are the only actions they take if the order is not followed. They do not attempt to enforce the order or collect damages for the aggrieved owner.
- (10)___ The certificate of expenses developed by the viewers should be sent to both parties.
- (11)___ The viewers' fees are deducted from the deposited security and any excess must be returned to the depositor. Minn. Stat. § 344.18.
- (12)___ The aggrieved livestock owner may demand that the delinquent owner pay the viewers' fees and double the amount of the expenses indicated on the certificate for building or repairing the fence. Minn. Stat. § 344.05.
- (13)___ If the delinquent livestock owner does not pay the aggrieved owner the demanded amount within one month, the aggrieved livestock owner may bring a civil action to recover the amount plus interest. Minn. Stat. § 344.05.

CHECKLIST 2: ASSIGNING SHARES

Minn. Stat. §§ 344.06 - .08

If a dispute arises regarding rights and obligations towards a partition fence, either party may apply to the viewers to resolve the dispute. These disputes focus primarily on who is responsible for which portion of the fence. Resolving these disputes may involve assigning shares in the fence to each owner and then ordering the fence be built or repaired. The following outlines the steps involved in handling these complaints as provided in Minn. Stat. §§ 344.06-.08.

(1)___ When livestock owners cannot agree as to the proper division of a fence or the obligations towards the fence, either may request the services of the viewers. Minn. Stat. § 344.06.

These disputes are *not* the same as disputes related to the location of a boundary line.

(2)___ The requesting livestock owner must file the required security with the town treasurer and request the services of the viewers. Minn. Stat. § 344.18.

(3)___ The viewers select a day and time for the viewing and provide notice to the parties. Minn. Stat. § 344.06. *See Appendix E* for a sample notice.

The notice should be sent to each owner.

Notice should also be posted at the town's regular posting places at least five days before the viewing.

(4)___ At the viewing, the viewers may assign to each owner a share in the fence and order that the fence be erected or repaired by a specific date. *See Appendix F* for a sample division form.

The goal of the division is to achieve a roughly equal burden among the livestock owners with respect to cost and maintenance work. This usually involves dividing the fence in the middle and assigning each livestock owner one end of the fence. However, an equal division of cost and work may involve something other than a 50/50 division. For instance, if one end of the fence is or would be located on rough terrain or through a swamp, the cost and maintenance burden for each end of the fence would likely be dramatically different. As such, the viewers may determine to divide the fence off center to more equalize the burdens. Keep in mind that if the fence is divided at something other than 50/50, the viewers must develop detailed findings of fact to explain and support the division.

The often-stated rule of the livestock owners facing each other at the center of the fence and then each taking the portion of the fence to their right is not in the law. While this rule continues to be a useful rule of thumb for dividing responsibility for a fence, the viewers should not consider themselves constrained by what is in essence a folk remedy to fence disputes.

- If the viewers find that either livestock owner has voluntarily erected or otherwise become the proprietor of more than the livestock owner's just share in the fence before a complaint was made, the other livestock owner is required to pay that portion of the fence assigned to the other livestock owner for repair and maintenance. The viewers are to determine the value of the fence and the owner can seek recovery of the costs in accordance with Minn. Stat. § 344.05. Minn. Stat. § 344.09.
 - If the lands are divided by a stream or pond, refer to **Appendix I** for further information and procedures.
- (5)___ The assignment of shares in the fence and order to build or repair the fence must be in writing and must be mailed to each owner.
- (6)___ The assignment of shares may be filed with the county recorder's office. Once filed, it becomes binding on the parties and upon all succeeding occupants of the lands. Minn. Stat. §§ 344.06; 344.16. The question, which is not fully addressed by the amended statute, is whether the change in Minn. Stat. § 344.03, which now applies only to livestock owners, does not apply to succeeding occupants who now do not raise livestock. MAT believes that the 2017 change means that subsequent landowners should not be bound by a prior determination if one of the owners does not own livestock.
- (7)___ If an owner fails to comply with the viewers' order, the aggrieved owner may build or repair the fence and seek double the cost of the construction and maintenance. The procedures involved are the same as those outlined in (8)-(13) of **Checklist One**.

CHECKLIST 3: DISPUTES OVER THE KIND OF FENCE TO BE BUILT **Minn. Stat. § 344.02**

Owners may disagree over the type of fence to be built on a partition line for any number of reasons. These disputes could stand alone, but more commonly are part of other disputes such as whether the fence is needed at all. If the only issue in dispute is the type of fence to be built, then follow the basic process set out in **Checklist One**, changing the language as needed. If other issues are involved, follow the appropriate checklist, and incorporate the following steps to address the dispute concerning the type of fence.

- (1)___ In preparation for handling the dispute, review the list of fences the Legislature has listed as 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.” Minn. Stat. § 344.02, subd. 1.

[] Fence viewers have some discretion under subdivision 1(e) to accept other types of fences and materials as sufficient fences. Furthermore, courts have acknowledged even broader discretion under Minn. Stat. § 344.02, subd. 2 to resolve these types of disputes. However, town boards are strongly encouraged to remain with one of the specific types of fences listed in the statute when resolving these disputes. Deviating in any significant way from the list of fences the Legislature has labeled as “legal” in favor of some variation or specialty fence is inviting a legal challenge.

- (2)___ At a meeting, set a date for a fence viewing and mail notice of the viewing to the parties. See **Appendix G** for a sample notice.

- (3)___ At the fence viewing, ask the parties to explain the type of fence they believe should be built and why. Pay attention to the reasons they give as to why they want, or do not want, a particular type of fence be built. The rationale that the board believes to be most persuasive and well-grounded will likely serve as the core to the findings of the fact the board will develop to support its order.
- (4)___ Record in the minutes of the viewing or subsequent meeting at which the decision is to be made the findings of fact the viewers relied upon to reach a decision.
- (5)___ If this is a stand-alone dispute, develop an order that orders a particular type of fence to be built. *See* **Appendix H** for a sample order.
- (6)___ Mail a copy of the order to all parties.

Appendix A: Sample Notice

STATE OF MINNESOTA)
County of _____)
Township of _____)

PLEASE TAKE NOTICE that a complaint has been filed with the town supervisors, as the fence viewers for the town, by _____ claiming that _____ has not complied with his/her obligation under the Minnesota Fence Law (Minn. Stat. Chap. 344) by failing to repair (or rebuild, or build) a portion of partition fence on the line between:

(describe the location of the fence with reasonable certainty)

YOU ARE HEREBY NOTIFIED that the fence viewers will, on the ____ day of _____, 20__ at _____ a.m./p.m., meet at the site of the fence to conduct a viewing and determine whether a partition fence must be built, repaired, or rebuilt. You may attend the viewing and be heard regarding this matter.

Questions regarding this hearing should be addressed to _____ at (____) _____

Dated this _____ day of _____, 20__.

Town Clerk

Appendix B: Sample Order

STATE OF MINNESOTA)
County of _____)
Township of _____)

WHEREAS, the supervisors, as the fence viewers of _____ Township, received a complaint from _____ claiming that _____ has failed to comply with his/her obligation under the Minnesota Fence Law; and

WHEREAS, the fence viewers did on the _____ day of _____, 20____, after providing due notice to the parties, examine the partition fence located between:

(describe the location of the fence as in the original notice);

WHEREAS, the fence viewers have determined that the portion of fence for which you are responsible, that being the (South) half of the fence, is in need of repair (or must be rebuilt, or must be built);

IT IS HEREBY ORDERED that _____ repair (or rebuild, or build) the (South) half of the partition fence by the _____ day of _____, 20____. Failure to comply with this order may result in the owner who filed the complaint about repairing (or rebuilding, or building) such portion of the fence at his/her own expense and seeking reimbursement of the viewers' fees related to this matter and double the ascertained costs to build such portion of the fence.

Dated this _____ day of _____, 20____.

Attest: _____
Town Clerk

BY THE TOWN BOARD

Town Board Chair

Appendix C: Sample Notice

STATE OF MINNESOTA)
County of _____)
Township of _____)

PLEASE TAKE NOTICE that _____ has filed a complaint with the town supervisors, as the fence viewers, claiming that the order issued by this board on the _____ day of _____, 20__ ordering _____ to repair (or rebuild, or build) the portion of the partition fence for which he/she is responsible, located between:

(describe the location of the fence as in the original notice)

has not been complied with. Furthermore, that due to the failure to comply with the order, _____ repaired (or rebuilt, or built) that portion of the fence and is now seeking reimbursement of the costs pursuant to Minn. Stat. 344.05.

YOU ARE HEREBY NOTIFIED that the fence viewers will, on the _____ day of _____, 20__ at _____ a.m./p.m., examine the fence and will, after giving the parties an opportunity to be heard, determine whether the fence is sufficient and the cost of the fence or repair.

Dated this _____ day of _____, 20__.

Attest: _____
Town Clerk

BY THE TOWN BOARD

Town Board Chair

Appendix D: Sample Certificate

STATE OF MINNESOTA)
County of _____)
Township of _____)

WHEREAS, a complaint was made by _____ to the town supervisors, as the fence viewers, that _____ has failed to repair (or rebuild, or build) the portion of partition fence, for which he/she is responsible, on the line between:

(describe the location of the fence as in the original notice);

WHEREAS, the supervisors did, after due notice to the parties, examine the fence on the _____ day of _____, 20__;

WHEREAS, the supervisors did determine that the portion of fence for which _____ is responsible, that being the (South) half of the fence, was in need of repair (or must be rebuilt, or must be built);

WHEREAS, the supervisors issued an order on the _____ day of _____, 20__, ordering _____ to repair (or rebuild, or build) the portion of fence by the _____ day of _____, 20__;

WHEREAS, _____ filed a complaint with the supervisors indicating that _____ did not comply with the order by the date indicated, that as a result he/she repaired (or rebuilt, or built) the portion of fence, and requested a fence viewing;

WHEREAS, the supervisors did, on the _____ day of _____, 20__, after providing due notice to the parties and providing an opportunity for them to be heard, did examine the fence;

THE BOARD DOES HEREBY FIND AND CERTIFY:

1. The portion of fence for which _____ was ordered by this board to (or rebuild, or build), but which was built by _____ upon failure to comply with the order, is sufficient.
2. The cost of repairing (or rebuilding, or building) that portion of fence was _____ dollars (\$_____).
3. The viewers fees in this matter are _____ dollars (\$_____).

Dated this _____ day of _____, 20__.

Attest: _____
Town Clerk

BY THE TOWN BOARD

Town Board Chair

Appendix E: Sample Notice of Assigning Shares

STATE OF MINNESOTA)
County of _____)
Township of _____)

PLEASE TAKE NOTICE that the town supervisors, as fence viewers for the town, received a request to conduct a fence viewing based on a controversy that has arisen concerning the rights of _____ and _____ in a partition fence and the obligation to erect or repair said fence located on the line between:

(describe the location of the fence with reasonable certainty);

YOU ARE HEREBY NOTIFIED that the fence viewers will, on the _____ day of _____, 20____, at _____ a.m./p.m., meet at the site of the fence to conduct a viewing, assign to each party a share in the fence, and direct the time within which the fence must be erected or repaired. You may attend the viewing and be heard regarding this matter.

Dated this _____ day of _____, 20____.

BY THE BOARD

Town Board Chair

Attest: _____
Town Clerk

Appendix F: Sample Assignment Form

STATE OF MINNESOTA)
County of _____)
Township of _____)

WHEREAS, _____ requested the town supervisors, as fence viewers for the town, to conduct a fence viewing regarding a controversy which has arisen between him/her and _____ concerning their respective rights in and obligations toward a partition fence located on the line between:

(describe the location of the fence as in the original notice);

WHEREAS, the viewers did, on the _____ day of _____, 20____, after providing due notice to the parties, view the fence and provide an opportunity for the parties to be heard regarding the matter;

THE BOARD DOES HEREBY ASSIGN to each party a share in the partition fence as follows:

To _____ we assign _____ and

To _____ we assign _____;

FURTHERMORE, THE BOARD DOES HEREBY DIRECT that each party shall erect (or repair) the portion of fence above assigned by the _____ day of _____, 20____.

Dated this _____ day of _____, 20____.

BY THE BOARD

Town Board Chair

Attest: _____
Town Clerk

Appendix G: Sample Notice

STATE OF MINNESOTA)
County of _____)
Township of _____)

PLEASE TAKE NOTICE that a request has been filed with the town supervisors to conduct a fence viewing as the town fence viewers under Minn. Stat. Chap. 344 to determine the kind of fence to be built on the partition line as provided in Minn. Stat. § 344.02. The partition line related to this dispute is located

(describe the location of the fence with reasonable certainty)

YOU ARE HEREBY NOTIFIED that the fence viewers will, on the ____ day of _____, 20__ at _____ a.m./p.m., meet at the site of the proposed fence to conduct a viewing and determine the kind of fence to be built. You may attend the viewing and be heard regarding this matter.

Questions regarding this hearing should be addressed to _____ at (____) _____

Dated this _____ day of _____, 20__.

Town Clerk

Appendix H: Sample Order Determining Type of Fence

STATE OF MINNESOTA)
County of _____)
Township of _____)

WHEREAS, the town board supervisors of _____ Township, _____ County, Minnesota, received a request from _____ to conduct a fence viewing in their capacity as fence viewers under the Minnesota Fence Law (Minn. Stat. Chap. 344) of the partition line between his/her property and the property owned by _____;

WHEREAS, the purpose of the viewing was to resolve a dispute over the type of fence to be built on the partition line as provided in Minn. Stat. § 344.02;

WHEREAS, the positions of the parties can be summarized as follows:
[describe some of the specifics regarding the dispute (example: Joe Smith believes a 32 inch woven wire fence should be built because.... Bill Jones believes a barbed wire fence would be sufficient because)];

WHEREAS, the fence viewers did on the _____ day of _____, 20____, after providing due notice to the parties, conduct a viewing of the partition line located between:
[describe the parcels of property adjacent to the partition line on which the fence is to be built]

WHEREAS, the Legislature has listed in Minn. Stat. § 344.02, subd. 1 what it considers to be legally sufficient fences for the purpose of the fence law;

WHEREAS, the fence viewers find that [summarize the points that lead to the conclusion the viewers have reached];

WHEREAS, the fence viewers have determined the following kind of fence is appropriate under the facts of this dispute: [describe the specifics of the type of fence to be built]

IT IS HEREBY ORDERED that the parties shall construct the kind of fence described above, using substantially similar quality of materials and workmanship, on the partition line described above.

Dated this _____ day of _____, 20____.

BY THE TOWN BOARD

Town Board Chair

Attest: _____
Town Clerk

LANDS DIVIDED BY A STREAM OR POND

Minn. Stat. § 344.10

The specific provisions of this statute apply when:

1. a fence must be built;
2. the lands are bounded upon or divided by a stream or pond;
3. the viewers determine the stream or pond is itself not a sufficient fence;
4. the viewers determine that it is impracticable, without unreasonable expense, for a partition fence to be built on the waters at the true boundary line; and
5. either owner fails to join with the other owner in building a fence on one side or the other.

If all these conditions are present, either owner can apply to the viewers to resolve the dispute. The following are the steps involved in handling these specific situations.

- (1)_____ Aggrieved livestock owner deposits required security with the town treasurer and requests a viewing by the fence viewers. Minn. Stat. § 344.18.
- (2)_____ The viewers select a date and time to view the fence and then must provide notice to each owner. Minn. Stat. § 344.04.
 - The notice should be sent to each livestock owner. *See Appendix A* for sample notice.
 - Notice of the viewing should also be posted at the town's regular posting places.
- (3)_____ The viewers must view the stream or pond and determine whether each of the five conditions listed above are present. The findings related to each condition should be recorded in the record of the proceeding.
- (4)_____ If all of the conditions are met, the viewers must determine 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. The determination may also include an assignment of responsibility regarding a divided share in the fence.
- (5)_____ The viewers must put its determination in writing to each owner.
- (6)_____ The viewers' fees are deducted from the deposited required security and any excess must be returned to the depositor. Minn. Stat. § 344.18.
- (7)_____ If either livestock owner fails to build or maintain the assigned portion of the fence, the aggrieved owner can institute the procedures provided to resolve such disputes (i.e., Minn. Stat. § 344.04-.05).