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# **Minnesota Partition Fence Law**

## **Minnesota Statutes, Chapter 344**

Minnesota partition fence law requires neighboring owners or occupants of “improved and used” land to contribute in equal shares to the cost of building and maintaining a partition fence between their lands if either owner wants to fence the land. This law is administered and enforced by “fence viewers,” local officials designated by the law. This information brief describes Minnesota fence law and identifies case law that has interpreted the law. It also reviews recent legislative actions and judicial decisions on fence law in other states.

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### **Introduction: Fence law and livestock management**

Since humankind began to domesticate animals (livestock) for food, fiber, hides, and draft work more than 9,000 years ago, a key social and legal issue has been how to keep the livestock within secure, safe, and suitable areas. Many societies practice “open range” management; herders are principally responsible for keeping livestock in designated areas. Other societies rely mostly on fences, walls, or other structures to limit the mobility of livestock.

Like most western cultures, the United States and individual states have developed laws that supercede practices suitable to an open range environment. These laws determine who is ultimately responsible for limiting the unchecked mobility of domestic livestock. The Minnesota partition fence law (hereinafter referred to as “fence law”) imposes obligations on owners of improved land to build and maintain “partition fences.” This responsibility is broadly shared; not limited merely to owners of livestock. The following paragraphs summarize and discuss Minnesota fence law. The Appendices include a detailed section-by-section summary of the law and a discussion of court decisions in Minnesota and other states on the constitutionality of fence laws.

## **Common Law superceded by Fence Law: Restraint of livestock**

Under common law, a landowner need not fence his or her land against the livestock of another, but the livestock owner is required to restrain his or her livestock from entering a neighbor's land. In Minnesota, this common law concept is articulated in [Minnesota Statutes, chapters 346 and 561](#).<sup>1</sup> However, the common law concept is supplemented by [Minnesota Statutes, chapter 344](#), usually referred to as "Minnesota partition fence law."

Minnesota fence law establishes rules governing the construction and upkeep of partition fences. A partition fence is a fence on or very near the boundary line separating adjoining properties. [If a fence is built which does not create a shared-cost obligation, it is a division fence rather than a partition fence.] Fence law provisions are intended to resolve disputes when the adjoining landowners are unable to agree on:

- the need for a fence
- the type and minimum construction standards for a fence
- the value of an existing fence
- the proper division of the costs for the construction and maintenance of a fence

[Chapter 344](#) also provides for local enforcement. The law is administered and enforced by fence viewers. Failure to comply with an order issued by the fence viewers can result in the noncompliance landowner being responsible for the full cost of a partition fence. Further, an order under the law to construct and maintain a partition fence "runs with the land" and is binding on subsequent owners, if and when the order is filed with the county recorder.

While the statute generally applies to property owners throughout the state, its only significant application occurs in rural areas.

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<sup>1</sup> **Animals running at large.** In Minnesota, a livestock owner is bound by the common law duty to keep the livestock restrained on the owner's land. [Minnesota Statutes, sections 346.16, 561.09, and 609.605](#) strengthen this common law duty by making it unlawful for an owner or person having control of livestock to permit the animals to run at large. The law provides that any person who knowingly permits the running at large is liable to the person harmed for treble damages. ([Minnesota Statutes, sections 561.09 and 609.605](#), subdivision 1, (b)(1) apply to running at large or trespass within a city.)

## **Rights and Obligations: Building and maintaining a partition fence**

Minnesota fence law requires that a “legal and sufficient”<sup>2</sup> partition fence between adjoining properties be built and maintained in equal shares by the owners or occupants if two conditions are met:

- One of the owners desires to have the land totally or partly fenced.<sup>3</sup>
- The land of one or both of the owners or occupants is wholly or partly improved and used.

In practice, this means that a landowner may compel the owner or occupant of the adjoining property to build and maintain one-half of the fence between the two properties. Under the provisions of fence law, when an owner or occupant of unenclosed land uses a neighbor’s existing fence to enclose his or her land, the owner taking advantage of the existing fence must pay one-half of the existing fence’s current value to the owner of that fence.

## **Enforcement and Administration: Fence viewers**

Under Minnesota fence law, fence viewers serve as referees to resolve controversies between neighbors about partition fences. The law designates fence viewers based on the type of governmental unit in which the neighboring properties are located.<sup>4</sup>

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<sup>2</sup> [Minnesota Statutes, section 344.02](#) defines a “legal and sufficient” fence. “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.”

<sup>3</sup> [Minn. Stat. § 344.03](#) (1998)

<sup>4</sup> [Minn. Stat. § 344.01](#) (1998)

| <b>Type of Governmental Unit</b>        | <b>Designated Fence Viewer</b>                   |
|---|--|
| Town (township)                         | One or more of the town supervisors              |
| Home rule charter city                  | The city council member for the ward             |
| City with commission form of government | The commissioner of public works                 |
| Statutory city                          | One or more members of the city council          |
| Unorganized townships                   | One or more commissioners of the relevant county |

An owner or occupant may submit a complaint to the fence viewers when he or she believes a neighbor has failed to build, repair, or maintain a partition fence in equal shares as required by Minnesota fence law. When neighboring landowners cannot reach agreement, the fence viewers will investigate and assign to each owner the portion of a fence to be constructed and maintained. Fence viewers may likewise determine the “sufficiency” of a partition fence and whether a new fence should be built or an existing fence rebuilt or repaired. Also, if adjoining landowners disagree as to the kind of fence to be built, the fence viewers must make that decision and order the fence built.

Fence viewers may also be called on to appraise the value of an existing fence and determine the cost of fence construction or repair. They must establish the value of an existing fence when an adjoining landowner makes use of the fence to enclose his or her land. They also have a duty to determine whether the land of one or both of the adjoining owners is in whole or in part “improved” relative to the burden of building a cost-shared partition fence between the properties.

Fence viewers do not determine exactly where on or near a property line a partition fence should be located. Further, fence viewers do not have authority under fence law to fix disputed boundary lines between properties involved in a fence viewing proceeding.

The duties of fence viewers are judicial in nature and notice to the parties is necessary to give the fence viewers jurisdiction in the proceedings. Failure of the fence viewers to give required notice to the parties voids the proceedings. The decision of fence viewers on questions within their jurisdiction, in the absence of fraud or mistake, is conclusive unless set aside on appeal.

Fence viewers are compensated \$15 for each day of service. The person employing the fence viewers deposits \$60 with the local government unit represented by the fence viewers. The deposited amount is used to compensate the fence viewers. Any remainder of the deposit is returned to the person upon completion of the service. A fence viewer who unreasonably fails to perform a duty required by the fence law must forfeit a penalty of \$5 to the town or city and is liable to the injured party for all resulting damages.

## **Damages: Failure to comply with fence viewer order**

If a person fails to build, repair, or rebuild a partition fence as required by an order of the fence viewer(s), and the adjoining property owner proceeds with the work, the person actually doing the building or repair work may recover from the adjoining landowner double the amount of the expenses or costs that would have been the adjoining landowner's share of the fence. The fence viewer(s) reach a determination on the cost or value of the fence. In essence, the noncompliant landowner is required to pay for the full cost of the fence.

## **Exemptions: Situations where [chapter 344](#) does not apply**

Under certain circumstances Minnesota fence law does not apply:

- **Voluntary agreements.** If neighboring landowners agree orally or in writing to construct and maintain a partition fence between their properties, that agreement controls; regardless of its terms. An oral agreement between neighbors does not bind subsequent owners who have not recognized and acted upon it. If the agreement is in writing and filed with the county recorder, however, it “runs with the land” and binds later owners and residents of the properties with respect to management and cost-sharing of the partition fence.
- **Town law option.** Towns (townships) may adopt their own fence law. These town fence laws may differ slightly or substantially from Minnesota fence law. The procedure is for eight or more freeholders of a town to petition the town board for development of an alternative partition fence policy. The town board may then draft a partition fence ordinance and present it for adoption by the voters of the town. If the town voters approve the proposed local policy, the provisions of the new ordinance constitute fence law within the town and [chapter 344](#) does not apply in that town.<sup>5</sup>
- **Partial waiver by a town.** A town board may, by ordinance, waive the application of Minnesota fence law in cases where the two neighbors have a combined total of less than 20 acres of neighboring land.
- **Special law for St. Louis County.** St. Louis County has a special statutory provision that modifies the cost-sharing requirements and the determination of need or benefit under the fence law.

## **Constitutionality: Fence law challenged**

At least one district court in Minnesota has held the Minnesota partition fence law unconstitutional as a violation of due process. As an unpublished trial court decision, this case has little precedential value.

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<sup>5</sup> The legislature granted this authority in 1982, but to date no town has exercised this option.

Courts in other states have split on the issue of whether laws similar to Minnesota fence law are unconstitutional. An intermediate appellate court in New York has held a New York law similar to Minnesota's to be an unconstitutional taking of property. By contrast, the Iowa Supreme Court has upheld the constitutionality of the nearly identical Iowa law. These cases are discussed in more detail in [Appendix A](#).

## **Legislative Proposals: Changing core provisions of Minnesota fence law**

Legislation was introduced in the 1992 legislative session that would have instituted flexible apportionment of the cost of a partition fence between adjoining landowners. The bill, House File 2115, proposed to exempt a landowner who had no need for a fence from paying any of the costs for the construction or maintenance of a fence. It provided that if a controversy arose about the need for a fence, either property owner could apply to the fence viewers. The fence viewers would then determine the relative need for a fence. If the fence viewers determined that one party had no need for the fence, that landowner would not be obligated to pay any of the cost for the fence. The bill provided further that if the fence viewers decided that an assignment of shares in the fence was appropriate, the shares must be assigned in accordance with the relative need and benefit of each party. The assigned shares would not need to be equal.

The proposed legislation also made it clear that a decision by the fence viewers could be appealed to district court.

H. F. 2115 passed the House but was amended in the Senate to be a special law applicable only within St. Louis County. The special legislation became Laws 1992, Chapter 519, and is now codified in Minnesota Statutes as [section 383C.809](#).<sup>6</sup>

In 1994, the legislature amended [section 344.03](#), subdivision 1, to clarify that it also applies to the Minnesota Department of Natural Resources when the department owns land adjoining private land and the owner of the private land wants the land permanently fenced for the purpose of restraining livestock.

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<sup>6</sup> **383C.809 ST. LOUIS COUNTY; PARTITION FENCE CONTROVERSIES.** Notwithstanding [chapter 344](#), when an owner or occupant of land in St. Louis county applies to the fence viewers for settlement of a partition fence controversy under [chapter 344](#), the fence viewers shall not require an owner or occupant who can establish to the fence viewers that the establishing owner or occupant has no need for a fence to pay any share of the cost of construction or maintenance of the fence. If an owner or occupant is exempt from payment of any of the costs of a partition fence because the owner or occupant does not need the fence, but that owner's or occupant's circumstances change to include the need for a partition fence within seven years of completion of the partition fence, either owner or occupant may request the fence viewers to perform a reevaluation and reassignment of shares of the cost of construction and maintenance in accordance with [section 344.06](#). If the landowners or occupants disagree about the need for a fence, it is a controversy under that section. A decision by the fence viewers of a controversy relating to a partition fence may include an assignment of shares of the cost of construction, repair, or maintenance of a partition fence in accordance with the need and benefit of each party. Except as provided in this section, all other controversies relating to partition fences shall conform to [chapter 344](#).

## Appendix A

### Court Cases and Fence Law

In spite of the fact that Minnesota fence law dates from territorial days, relatively few court cases regarding the law have reached the appellate level. Of these, no case at the appellate level directly challenged the constitutionality of the act. However, one case in a Minnesota district court did question the act's constitutionality.

#### Constitutional Challenge in the Ninth Judicial District

The case of *Emil J. Radaich v. Blandin Paper Company* was decided in the Ninth Judicial District Court in September 1982. The case presented a direct constitutional challenge to Minnesota Statutes, chapter 344.

The case involved the assignment and recovery of costs and expenses incurred by the plaintiff (Emil J. Radaich) for the construction of a partition fence between his land and the adjoining land of the defendant (Blandin Paper Company). Radaich's chief need for the fence was to prevent his cattle, which pastured on his land, from straying onto Blandin Paper's land. Blandin was growing trees on its adjoining land for use in the manufacture of paper products. Radaich wanted Blandin to pay one-half of the costs for erecting the partition fence under [Minnesota Statutes, chapter 344](#).

As provided in [chapter 344](#), Radaich requested two town supervisors acting as fence viewers to view the proposed fence line. The fence viewers, under [sections 344.01, 344.04, and 344.06](#), assigned the duty to build and maintain a partition fence between the Radaich and Blandin lands in equal shares. Representatives of Blandin made it clear that Blandin believed it would receive no benefit from the fence and would not participate.

Radaich then completed the erection of the entire fence between the two adjoining properties. After completing the fence he asked for another viewing of the fence by the viewers under [section 344.05](#). A final viewing took place and the fence viewers determined the sufficiency of the fence and the total reasonable cost sustained by Radaich in erecting the fence.<sup>7</sup> Blandin was notified but did not comply with the fence viewers' order. Radaich then commenced legal action to recover his expenses.

Radaich argued that Blandin had an obligation to build and maintain the fence in equal shares with him as determined by the fence viewers and that he should be reimbursed the expenses associated with building the fence. The attorney for Blandin argued that the company did not want or need the fence and received no benefit from it, thus for Blandin to be made responsible for one-half of the cost would be to deprive the Blandin of its property in violation of the [14th Amendment](#) of the U. S. Constitution.

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<sup>7</sup> Because of certain circumstances the viewers assigned only one-half of the total costs to Blandin, rather than the entire costs as is permitted.

Although several issues were involved in the case, the central issue was the constitutionality of the act itself. [Section 344.03](#) and its predecessor are crucial to that question in this case.

Before 1915 what is now section 344.03 read:

The respective owners or occupants of land inclosed [sic] by fences shall keep up and maintain partition fences between their own and the next adjoining inclosures [sic] in equal shares.

Laws 1915, chapter 173, changed the language of section 344.03 to read:

The adjoining owners or occupants of lands of this state when the land of one or both of such owners is in whole or in part improved and used, and one or both of such 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.

Finally, Laws 1985, chapter 265, article 6, section 1, a revisor's bill, changed the language in a non-substantive way to read:

If all or part of adjoining Minnesota land is improved and used, 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.

These changes, other than the 1985 law, are significant. Before 1915 the language related to owners or occupants of land *enclosed by fences* (emphasis added). Pasturage of cattle was sufficient to constitute improvement of land and thereby trigger the fence law. In the pre-1915 language, both parties are assumed to benefit from a partition fence. When the lands were enclosed, the landowners mutually enjoyed the use and benefit of the fence and therefore incurred the right and obligation to maintain it.

However, the current language relates to adjoining land that is improved and used, but is not enclosed. The criteria to effect application of the fence law is if the land of adjoining owners is improved and used and one or both of the owners wants the land to be fenced. [Section 344.03](#), the critical section of [chapter 344](#), does not contain expression of need or benefit.<sup>8</sup>

The district judge in the *Radaich* case ruled in favor of Blandin and declared that the whole of the fence law was “unworkably in violation of the [14th Amendment](#) Due Process Clause, and totally unconstitutional.” Blandin neither needed nor received any benefit from the erection of the partition fence and hence to compel Blandin to contribute to the construction, maintenance,

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<sup>8</sup> The Minnesota Supreme Court in a case decided in 1975—the case was not a constitutional challenge to the fence law—invited the legislature's attention to potential inequities in [section 344.01](#). See *Brom v. Kalmes*, 304 Minn. 244, 230 N.W.2d 69, (1975) n. 5. It should be noted also that the court alluded to the prospect that section 344.03 is a condition precedent to application of other provisions of [chapter 344](#), but because the question was not directly before the court, it offered no opinion.

and repair of the fence deprived Blandin of its property without due process of law.<sup>9</sup> The judge refused to declare the law unconstitutional in this case because the defendant, Blandin, did not begin an action placing the constitutionality of the fence law in issue before the plaintiff completed the partition fence. Blandin stood by while Radaich assumed the expense of building his own, and the portion of the fence assigned to Blandin.

*Radaich v. Blandin Paper Company* was a trial court case. Apparently the district court decision was not appealed, or at least the case was never heard by a higher court. Therefore, the ruling is not binding in statewide application.

Unlike decisions of appellate courts which are regularly reported (e.g., *Minnesota Reports* and *North Western Reporter*), decisions of district courts are not included in any series of law reports in daily use and, in the absence of such reports, the doctrine of precedent is likely to be ineffective. At the district court level, district court judges are not bound by a decision of other district court judges within or without the particular district, except in class action cases. Another judge could find the fence law constitutional if the judge faced the question of the law's constitutionality with the same or similar conditions found in the *Radaich* case. Also, the *Radaich* case applies only to the particular case for which the decision was rendered. However, some concluding remarks of the presiding judge in the case may be instructive.

... [D]efendant and others similarly situated may rest assured that they will not be faced with the provisions of [chapter 344](#), Minnesota Statutes in the future, unless my decision is reversed, or the statute is redrawn in a manner which will pass constitutional muster.

A recent decision of the Iowa Supreme Court that challenged the constitutionality of Iowa's fence law, which is similar to that of New York at the time of the New York decision referenced in footnote 9, reached a different conclusion from the New York courts.

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<sup>9</sup> The judge cited favorably the decision in a New York case, which involved a situation similar to the *Radaich* case, that challenged the constitutionality of that state's town fence law. One party to the suit owned a dairy farm of about 200 acres on which he kept and grazed dairy cows. The other party owned and resided on about 158 acres of land without livestock and with only about ten acres under cultivation. The owners shared a common boundary. Fence viewers issued a directive that the owner without livestock must repair one half of an existing partition fence between the properties. The property owner refused to repair the fence and brought action challenging the constitutionality of the fence law.

The court said that the fence law, if applied to the properties in question, would deprive the landowners without livestock of their property, since they would be compelled to erect and maintain at their own expense fences which they neither needed nor wanted. The court went on to declare that even if a statute providing that each owner of two adjoining tracts of land must erect and maintain a just and equal portion of a division fence between such lands that benefitted the general public, such provision requiring an adjoining owner, who did not keep livestock to share the cost of a fence for the benefit of a neighbor who did keep livestock, was not necessary to any legitimate public purpose and was oppressive and unconstitutional. (*Sweeny v. Murphy*, 39 A.D 306, 344 N.Y.S. 2d 239 (1972) affirmed without opinion, 31 N.Y. 2d 1042, 342 N.Y.S. 2d 70, 294 N.E. 2d 855 (1973). Subsequent to the ruling of the New York courts, the New York Legislature statutorily modified the fence law to accommodate the decision by exempting an owner of an adjacent tract of land who did not keep animals on it from obligation or liability for erecting, maintaining, or repairing a division fence under the fence law.

The operative section of the Iowa Code on fence law states:

**359A.1 Partition fences.**

The respective owners of adjoining tracts of land shall upon written request of either owner be compelled to erect and maintain partition fences, or contribute thereto, and keep the same in good repair throughout the year.

The case involved owners of adjacent tracts of land and the construction and maintenance of a partition fence under the Iowa statute. One of the landowners leased a portion of his land for growing crops while the adjacent owner raised and pastured miniature horses on his tract of land. The owner with cultivated land challenged the validity of the statute when the fence viewers entered an order requiring him to maintain a portion of a fence between the properties as provided by law. The Iowa courts found the fence law to be constitutional on its face and a valid exercise of the state's police power. It declared that the statute was not unconstitutional as applied to landowners who did not own animals but were required to pay part of the maintenance on fences adjoining land on which horses were raised; that the statute applied equally to all adjoining landowners without regard to use of the land; and the statute was not unduly oppressive. (*William and Terri Gravert v. Max and Ruth Nebergall*, 359N.W. 2d 184 (Iowa 1995)).

## **Appendix B**

### **Minnesota Fence Law; a brief section-by-section description**

#### **Section 344.01. Fence Viewers.**

Designates as fence viewers town supervisors in towns and city council members in cities. (Section 344.19 designates county commissioners as fence viewers in counties not organized into towns.)

#### **Section 344.011. Exemption.**

Authorizes a town board to exempt adjoining owners from the partition fence law when their land taken together is less than 20 acres.

#### **Section 344.02. Kinds of Partition Fences.**

Defines a “legal and sufficient” fence. It also authorizes the fence viewers to determine the kind of fence to be built if the adjoining property owners or occupants disagree on the matter.

#### **Section 344.03. Expense; Equal Shares.**

Requires adjoining landowners or occupants to build and maintain a partition fence between their lands in equal shares when of one or both of the owners of the land wishes the land to be fenced and all or part of the adjoining land is improved and used.

#### **Section 344.04. Failure to Build or Repair; Rights of Complainant.**

Establishes a procedure for complaint and adjustment when one of the property owners or occupants who is required to build or maintain a fence fails to do so. If the delinquent party fails to comply with an order by the fence viewers, the complainant may build, rebuild, or repair the fence and be reimbursed for it.

#### **Section 344.05. Repair Costs Recoverable.**

Allows the party who built, rebuilt, or repaired the fence to recover from the delinquent owner or occupant double the amount of the cost of the fence or repair as ascertained by the fence viewers (i.e., the total cost of the fence or double the cost of replacing or repairing one-half of a partition fence), together with the viewer’s fees. If the amount is not paid within one month, recovery may be made by a civil action.

#### **Section 344.06. Controversy; Decision by Fence Viewers.**

When a controversy arises between neighbors concerning a partition fence, either party may apply to the fence viewers, who, after notice to the parties, may assign to each party a share in the fence and stipulate the time within which the fence must be erected or repaired. The assignment may be filed for record with the county recorder after which it is binding on the parties and on all succeeding owners or occupants of the properties.

**Section 344.07. Failure to Erect or Maintain.**

If a party does not erect or maintain the part of a partition fence assigned them, the other party may erect and maintain the fence, and is entitled to double the cost of the construction and maintenance.

**Section 344.08. Recorded Division; Binding on Heirs and Assigns.**

Makes all divisions of fences made by the fence viewers or made by owners of neighboring properties, in writing, and filed with the county recorder, valid against the neighbors and to their heirs and assigns.

**Section 344.09. Party Erecting More than Share.**

Provides that if there is a controversy between neighbors relating to their respective rights in a partition fence, and the fence viewers decide that one of the occupants has voluntarily erected more than that occupant's share of a fence before a complaint was made, the other occupant must pay for the share of the fence assigned to the other. The value of the fence is to be determined by the fence viewers.

**Section 344.10. Lands Bounded by a Stream or Pond.**

When neighboring properties are separated by a stream or other body of water where a fence can not reasonably be constructed, the fence viewers must determine on which side of the stream or pond the fence should be built.

**Section 344.11. Lands Occupied in Common.**

When properties have been occupied in common without a partition fence and one of the occupants desires that the property be divided and fenced, the fence viewers are responsible to order that the divided land be fenced and the costs of the fence shared equally.

**Section 344.12. Viewers to Fix Time for Building.**

If fence viewers have divided and assigned fence responsibilities on land previously occupied in common, they may set a time for building the fence. If either party does not build the assigned part of the fence within the assigned time, the other party may build both parts of the fence and recover viewers' fees and double the cost of building the part not assigned to him or her.

**Section 344.13. Lands First Enclosed.**

When unenclosed lands are enclosed (fenced), the owner or occupant of each property must pay one-half of the value of the partition fence separating the person's land from that of each neighboring owner or occupant. If the parties do not agree, the value is determined by the fence viewers. If the owner or occupant does not pay within 60 days after the value is determined and demanded, the owner of the fence may recover the value and cost of determining it in a civil action.

**Section 344.14. Viewers When Fence on Town Line.**

When a partition fence is to be built on a line between towns, or partly in one town and partly in another, one supervisor from each town serve as the fence viewers.

**Section 344.16. Division or Recorded Agreement Runs with the Land.**

If a partition fence is built between unimproved lands, and the fence viewers have determined the portion of the fence for which each land owner is responsible, or if a voluntary agreement by the parties has been recorded, that agreement or division is forever binding on the property owners and their heirs or assigns.

**Section 344.17. Failure of Viewer to Perform Duty; Penalty.**

A fence viewer who fails to perform a duty is required to forfeit \$5 to the town or city and be liable for all resulting damages.

**Section 344.18. Compensation of Viewers.**

Requires fence viewers to be paid \$15 a day by the person employing them. A \$60 deposit is required before services are performed.

**Section 344.19. Viewers in Counties not Organized into Towns.**

Designates county commissioners as fence viewers in counties not organized into towns, but county commissioners may be paid a per diem pursuant to section 375.055, subdivision 1 (county commissioner compensation), and mileage in accordance with section 471.665.

**Section 344.20. Town Option.**

A town board is granted the option of designing and adopting its own partition fence law, including enforcement procedures, upon a petition of eight or more freeholders of the town. The policy must be approved by the town electors at the annual or a special town meeting. If the electors vote in favor of adopting the proposed policy, the provisions of chapter 344 no longer apply in that town.

## Appendix C

### Decisions and Opinions Relating to Minnesota Partition Fence Law

#### Appellate Court Decisions:

*Boening v. Hornburg*, 1877, 24 Minn. 307  
*Oxborough v. Boesser*, 1882, 30 Minn. 1, 13 N.W. 906  
*McClay v. Clark*, 1890, 42 Minn. 363, 44 N.W. 255  
*Davis v. Board of County Commissioner of St. Louis County*, 1896, 65 Minn. 310, 67 N.W. 971  
*Youngman v. Ahrens*, 1908, 104 Minn. 531, 116 N.W. 1135  
*Tuebert v. Sons*, 1911, 116 Minn. 195, 133 N.W. 467  
*James v. Williams*, 1925, 165 Minn. 415, 206 N.W. 654  
*Brom v. Kalmes*, 1975, 304 Minn. 244, 230 N.W.2d 69  
*Miles v. Althoff*, 1985, 373 N.W.2d 655 (Minn. App. 1985)  
*Rice v. Kringler*, 1994, 517 N.W.2d 607 (Minn. App. 1994)

#### Appellate Court Decisions Relating to Particular Sections:

##### Section

|        |   |
|--------|---|
| 344.02 | <i>Boening v. Hornburg</i> , 1877, 24 Minn. 307<br><i>Oxborough v. Boesser</i> , 1882, 30 Minn. 1, 13 N.W. 906  |
| 344.03 | <i>Brom v. Kalmes</i> , 1975, 304 Minn. 244, 230 N.W.2d 69  |
| 344.04 | <i>McClay v. Clark</i> , 1890, 42 Minn. 363, 44 N.W. 255<br><i>Davis v. Board of County Commissioner of St. Louis County</i> , 1896, 65 Minn. 310, 67 N.W. 1135<br><i>Miles v. Althoff</i> , 1985, 373 N.W.2d 655 (Minn. App. 1985)<br><i>Rice v. Kringler</i> , 1994, 517 N.W.2d 607 (Minn. App. 1994) |
| 344.05 | <i>Oxborough v. Boesser</i> , 1882, 30 Minn. 1, 13 N.W. 906   |
| 344.06 | <i>Oxborough v. Boesser</i> , 1882, 30 Minn. 1, 13 N.W. 906<br><i>McClay v. Clark</i> , 1890, 42 Minn. 363, 44 N.W. 255<br><i>James v. Williams</i> , 1925, 165 Minn. 415, 206 N.W. 654   |
| 344.07 | <i>Oxborough v. Boesser</i> , 1882, 30 Minn. 1, 13 N.W. 906   |
| 344.08 | <i>Oxborough v. Boesser</i> , 1882, 30 Minn. 1, 13 N.W. 906<br><i>Tuebert v. Sons</i> , 1911, 116 Minn. 195, 133 N.W. 467   |
| 344.13 | <i>Boening v. Hornburg</i> , 1877, 24 Minn. 307<br><i>Brom v. Kalmes</i> , 1975, 304 Minn. 244, 230 N.W.2d 69   |

## **Attorney General Opinions Relating to Partition Fence Law**

### Section

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| 344.02 | 631-L, April 8, 1953, 631-H, June 22, 1948, 631-A, June 22, 1956       |
| 344.03 | 631-H, August 28, 1952, 631-N, September 20, 1949, 631-H, June 2, 1964 |
| 344.04 | 631-H, April 5, 1950, 631-N, September 20, 1949                        |
| 344.05 | 631-H, April 23, 1956  |
| 344.06 | 631-H, April 5, 1950   |
| 344.08 | 631-H, June 2, 1964  |
| 344.18 | 631-H, April 23, 1956  |