

## **IC 32-26-9**

### **Chapter 9. Partition Fences**

#### **IC 32-26-9-0.5**

##### **"Agricultural land"; nonapplicability of chapter**

Sec. 0.5. (a) As used in this section, "agricultural land" means land that is:

- (1) zoned or otherwise designated as agricultural land;
- (2) used for growing crops or raising livestock; or
- (3) reserved for conservation.

(b) This chapter does not apply to a fence that separates two (2) adjoining parcels of property unless at least one (1) of the adjoining parcels is agricultural land.

*As added by P.L.57-2003, SEC.1.*

#### **IC 32-26-9-1**

##### **Existing fences**

Sec. 1. A fence that is used by adjoining property owners as a partition fence, unless otherwise agreed upon by the property owners, is considered a partition fence and shall be repaired, maintained, and paid for as provided under this chapter.

*As added by P.L.2-2002, SEC.11.*

#### **IC 32-26-9-2**

##### **Lands outside or abutting municipal boundary**

Sec. 2. (a) The owner of a property that:

- (1) is located outside;
- (2) abuts; or
- (3) is adjacent to;

the boundary of the corporate limits of a town or city shall separate the owner's property from adjoining properties by a partition fence constructed upon the line dividing or separating the properties regardless of when the properties were divided.

(b) Except as otherwise provided in this chapter, and if a division of the partition fence has not been made between the property owners for the building, repairing, or rebuilding of the partition fence:

- (1) for a partition fence built along a property line than runs from north to south:

(A) the owner whose property lies to the east of the fence shall build the north half of the fence; and

(B) the owner whose land lies to the west of the fence shall build the south half of the fence; and

- (2) for a partition fence built along a property line that runs from east to west:

(A) the owner whose property lies north of the fence shall build the west half of the fence; and

(B) the owner whose property lies to the south of the fence shall build the east half of the fence.

(c) Notwithstanding subsection (b), if either property owner has constructed one-half (1/2) of a partition fence that is not the portion required under subsection (b) and has maintained that portion of the partition fence for a period of not less than five (5) years, the property owner may continue to maintain the portion of the fence.

(d) If a property owner fails to build, rebuild, or repair a partition fence after receiving notice under this chapter, the township trustee of the township in which the property is located shall build, rebuild, or repair the fence as provided under this chapter.

*As added by P.L.2-2002, SEC.11.*

### **IC 32-26-9-3**

#### **Defaulting landowner; description of lawful partition fence; floodgate across watercourse**

Sec. 3. (a) A partition fence shall be built, rebuilt, and kept in repair at the cost of the property owners whose properties are enclosed or separated by the fences proportionately according to the number of rods or proportion of the fence the property owner owns along the line of the fence, whether the property owner's title is a fee simple or a life estate.

(b) If a property owner fails or refuses to compensate for building, rebuilding, or repairing the property owner's portion of a partition fence, another property owner who is interested in the fence, after having built, rebuilt, or repaired the property owner's portion of the fence, shall give to the defaulting property owner or the defaulting property owner's agent or tenant twenty (20) days notice to build, rebuild, or repair the defaulting property owner's portion of the fence. If the defaulting property owner or the defaulting property owner's agent or tenant fails to build, rebuild, or repair the fence within twenty (20) days, the complaining property owner shall notify the township trustee of the township in which the properties are located of the default.

(c) This subsection applies if the fence sought to be established, rebuilt, or repaired is on a township line. Unless disqualified under subsection (h), the complaining property owner shall notify the trustee of the township in which the property of the complaining property owner is located of the default under subsection (b), and the trustee has jurisdiction in the matter.

(d) The township trustee who receives a complaint under this section shall:

- (1) estimate the costs for building, rebuilding, or repairing the partition fence; and
- (2) within a reasonable time after receiving the complaint, make out a statement and notify the defaulting property owner of the probable cost of building, rebuilding, or repairing the fence.

If twenty (20) days after receiving a notice under this subsection the defaulting property owner has not built, rebuilt, or repaired the fence, the trustee shall build or repair the fence. The trustee may use only

the materials for the fences that are most commonly used by the farmers of the community.

(e) If the trustee of a township is disqualified to act under subsection (h), the trustee of an adjoining township who resides nearest to where the fence is located shall act on the complaint upon receiving a notice by a property owner who is interested in the fence.

(f) A lawful partition fence is any one (1) of the following that is sufficiently tight and strong to hold cattle, hogs, horses, mules, and sheep:

(1) A straight board and wire fence, a straight wire fence, a straight board fence, or a picket fence four (4) feet high.

(2) A straight rail fence four and one-half (4 1/2) feet high.

(3) A worm rail fence five (5) feet high.

(g) This subsection applies if a ditch or creek crosses the division line between two (2) property owners, causing additional expense in the maintenance of the part over the stream. If the property owners cannot agree upon the proportionate share of each property owner, the township trustee shall appoint three (3) disinterested citizens who shall apportion the partition fence to be built by each property owner.

(h) If a township trustee is:

(1) related to any of the interested property owners; or

(2) an interested property owner;

the trustee of any other township who resides nearest to where the fence is located shall act under this chapter.

(i) This subsection applies if a ditch or creek forms, covers, or marks the dividing line or a part of the dividing line between the properties of separate and different property owners so that partition fences required under this chapter cannot be built and maintained on the dividing line. The partition fences shall be built and maintained under this chapter as near to the boundary line as is practical, and each property owner shall build a separate partition fence on the property owner's property and maintain the fence at the property owner's cost.

(j) This subsection applies where a partition fence required under this chapter crosses a ditch or creek and it is impracticable to construct or maintain that portion of the fence that crosses the ditch or creek as a stationary fence. Instead of the portion of the fence that would cross the ditch or creek, there shall be constructed, as a part of the partition fence, floodgates or other similar structures that are sufficiently high, tight, and strong to turn hogs, sheep, cattle, mules, and horses or other domestic animals. The floodgates or other similar structures shall be constructed to swing up in times of high water and to connect continuously with the partition fences.

(k) This subsection applies if the building and maintenance of the floodgates or other similar structure required under subsection (j) causes additional expenses and the property owners cannot agree upon the character of floodgates or other similar structure, or upon the proportionate share of the cost to be borne by each property

owner. The township trustee, upon notice in writing from either property owner of a disagreement and the nature of the disagreement, shall appoint three (3) disinterested citizens of the township who shall determine the kind of structure and apportion the cost of the floodgate or other structure between the property owners, taking into consideration the parts of the fence being maintained by each property owner.

(l) The determination of a majority of the arbitrators of any matter or matters submitted to them under this section is final and binding on each property owner. The compensation of the arbitrators is two dollars (\$2) each, which shall be paid by the property owners in the proportion each property owner is ordered to bear the expense of a gate or structure.

(m) This subsection applies if either or both of the property owners fail to construct or compensate for constructing the structure determined upon by the arbitrators in the proportion determined within thirty (30) days after the determination. The township trustee shall proceed at once to construct the gate or structure and collect the cost of the gate or structure, including the compensation of the arbitrators, from the defaulting property owner in the same manner as is provided for ordinary partition fences. The floodgate or other structure shall be repaired, rebuilt, or replaced according to the determination of the arbitrators.

*As added by P.L.2-2002, SEC.11.*

#### **IC 32-26-9-4**

##### **Expenses; construction and maintenance by township**

Sec. 4. (a) As soon as the township trustee has had a fence built, rebuilt, or repaired under this chapter, the trustee shall make out a certified statement in triplicate of the actual cost incurred by the trustee in the building, rebuilding, or repairing the fence. One (1) copy must be handed to or mailed to the property owner affected by the work, one (1) copy must be retained by the trustee as a record for the township, and one (1) copy must be filed in the auditor's office of the county in which the fence is located and in which the property of the property owner affected by the work is located. At the same time the trustee shall also file with the county auditor a claim against the county for the amount shown in the statement filed with the county auditor.

(b) The county auditor shall:

- (1) examine the claims and statement as other claims are examined; and
- (2) present the claims and statements to the board of county commissioners at the next regular meeting.

Unless there is an apparent error in the statement or claim, the board of county commissioners shall make allowance, and the county auditor shall issue a warrant for the amount claimed to the township trustee submitting the claim out of the county general fund without

an appropriation being made by the county council.

(c) The amount paid out of the county general fund under subsection (b) shall be:

- (1) placed by the county auditor on the tax duplicate against the property of the property owner affected by the work;
- (2) collected as taxes are collected; and
- (3) when collected, paid into the county general fund.

*As added by P.L.2-2002, SEC.11.*

#### **IC 32-26-9-5**

##### **Construction and maintenance by township; personal liability of trustees**

Sec. 5. The township trustee has no personal liability for a contract the trustee makes under this chapter for building, rebuilding, or repairing fences under this chapter. The contractor shall receive payment from the township funds, which shall be reimbursed when the contract price is paid into the county treasury.

*As added by P.L.2-2002, SEC.11.*

#### **IC 32-26-9-6**

##### **Construction and application of law**

Sec. 6. This chapter shall be liberally construed in favor of the objects and purposes for which it is enacted and shall apply to all agricultural land, whether enclosed or unenclosed, cultivated or uncultivated, wild or wood lot.

*As added by P.L.2-2002, SEC.11. Amended by P.L.57-2003, SEC.2.*