

256.042 Action to require construction or replacement of a farm boundary line fence -- Apportionment of cost -- Enforcement of lien.

- (1) The District Court shall have exclusive jurisdiction over all actions arising under this section or KRS 256.030.
- (2) The owner of a parcel of real estate used for agricultural purposes may file an action in the District Court to require the initial construction or replacement of a boundary line fence or any portion thereof on the boundary between any parcel of real estate adjacent to the real estate of the plaintiff.
- (3) The complaint shall describe the boundary line which is the subject of the action; the use of or the use to which the plaintiff's real estate is to be put; the specific reason that an initial or replacement fence is needed; the type of fence and fence construction that is proposed; whether an existing fence is to be removed; whether vegetation or growth must be removed in order to carry out the construction; the method proposed for removal; and the proposed disposition of the material that is removed.
- (4) The court shall determine if the existing fence is adequate or if no fence exists. If the court finds the existing fence is inadequate or no fence exists, the court shall order the construction of a new fence and shall find and order:
 - (a) The type of fence to be constructed based upon the use or proposed use of the real estate. Any permanent type of fence construction commonly accepted in the area may be ordered;
 - (b) If necessary, the removal of vegetation and growth from the boundary line or fence row in order to efficiently construct the fence, and the method of removal, including mechanical means;
 - (c) Disposition or piling of the removed material;
 - (d) Apportionment of the cost of the removal of the existing fence, the removal of growth and vegetation and the cost of the construction of the new fence, between the landowners, which shall be one-half (1/2) to each landowner unless the court determines such apportionment to be unconscionable.
- (5) The court shall grant the defendant a reasonable time after its order in which to comply with its judgment by constructing a fence in accordance with its order on the defendant's portion of the common boundary. If the defendant fails to comply, the court shall authorize the plaintiff to carry out the terms of its order and the defendant's portion of the cost pursuant to the order shall constitute a lien on the defendant's property and shall bear interest at the legal rate.
- (6) In all instances for purposes of maintenance of or construction of a fence on a common boundary line, the boundary line shall be divided between the parties and each landowner's portion shall be determined by assigning to him that portion of the boundary line which is on the right when facing the boundary from that landowner's real estate.
- (7) The lien provided herein may be enforced in the Circuit Court according to law if the defendant fails to satisfy the costs of the fence within sixty (60) days of the District Court's order.

Effective: July 15, 1988

History: Created 1988 Ky. Acts ch. 79, sec. 1, effective July 15, 1988.

