

## **CHAPTER 47-26 PARTITION FENCES**

### **47-26-01. Definition of legal fence.**

The following shall constitute a legal fence:

1. Any fence four and one-half feet [1.37 meters] high, in good repair, consisting of rails, timber, boards, stone walls, or any combination thereof.
2. All brooks, rivers, ponds, creeks, ditches, or hedges.
3. All things which, in the judgment of the fence viewers within whose jurisdiction the fence may be, are equivalent to the things specified in subsections 1 and 2.
4. Any fence upon which the interested parties may agree.
5. A barbed wire fence consisting of at least three barbed wires with at least number twelve and one-half gauge wire, the wire to be fastened firmly to posts which shall be not more than twenty feet [6.10 meters] or not more than forty feet [12.19 meters] and three stays apart. The top wire shall be not less than forty inches [101.6 centimeters] high, the bottom wire shall be not more than sixteen inches [40.64 centimeters] above the ground, and no two adjacent wires shall be separated by more than sixteen inches [40.64 centimeters].
6. A wire fence consisting of five smooth wires with posts not more than two rods [10.06 meters] apart and with good stays not more than eight feet [2.44 meters] apart, the top wire being not less than forty-eight inches [121.92 centimeters] nor more than fifty-six inches [142.24 centimeters] and the bottom wire being not less than sixteen inches [40.64 centimeters] nor more than twenty inches [50.8 centimeters] above the ground.
7. An electrified fence consisting of:
  - a. One smooth wire located twenty-six inches to thirty-two inches [66.04 centimeters to 81.28 centimeters] above the ground and posts no more than one hundred feet [30.48 meters] apart;
  - b. Two smooth wires, with the top wire located at least twenty-six inches [66.04 centimeters] above the ground, the bottom wire located eight inches to ten inches [20.32 centimeters to 25.40 centimeters] below the top wire, and posts no more than one hundred feet [30.48 meters] apart; or
  - c. Three smooth wires, with the top wire located at least twenty-six inches [66.04 centimeters] above the ground, the middle and bottom wires located eight inches to twelve inches [20.32 centimeters to 30.48 centimeters] apart, and posts no more than seventy-five feet [22.86 meters] apart.

### **47-26-02. Fence viewers.**

In an organized township, the members of the board of township supervisors shall act as fence viewers.

### **47-26-03. Fence viewers taken from each township when a fence is on line between two townships.**

When the line upon which a partition fence is to be made or divided is the boundary line between civil townships or is partly in one civil township and partly in another, a township supervisor shall be taken from each township affected when the services of fence viewers are required.

### **47-26-04. Fees of fence viewers.**

Each township supervisor may be paid by the employing person at the rate of no more than fifteen dollars per day for the time employed as a fence viewer. If such person neglects to pay such fees within thirty days after the service is performed, the township supervisor may recover the amount thereof in a civil action.

**47-26-05. Partition fences - Maintained by occupants and owners of land - Partition fence exceeding legal fence.**

The occupants and the coterminous owners of lands enclosed with fences are mutually and equally bound to maintain the partition fences between their own and the next adjoining enclosures unless one of such owners chooses to let that owner's land lie open. If one of such occupants or owners shall require a partition fence which shall exceed the requirements for a legal fence, the occupant or owner who shall require such a fence shall bear the entire cost of erecting and maintaining such a fence unless both such occupants or owners shall otherwise agree.

**47-26-06. Fences to be kept in repair throughout the year.**

All partition fences shall be kept in good repair throughout the year unless the occupants of the lands on both sides thereof mutually agree otherwise.

**47-26-07. Fence viewers may order partition fence maintained.**

If any party neglects to repair or rebuild any partition fence which it is that party's duty to maintain, the aggrieved party may complain to the proper fence viewers, or a majority of them, who, after due notice to each party, shall proceed to examine the fence. If they determine that the fence is insufficient, they shall signify the determination in writing to the delinquent party, and direct that party to repair or rebuild the fence within such time as they deemed reasonable. If the fence is not repaired or rebuilt accordingly, the complainant may repair or rebuild the same.

**47-26-08. Person rebuilding or repairing fence may recover expenses.**

A complainant who has rebuilt or repaired a deficient fence as provided in section 47-26-07 may recover, from either the owner or the occupant of the land where the fence was deficient, the value of repairing or rebuilding the same and the fees of the fence viewers after:

1. The rebuilt or repaired fence has been adjudged sufficient by two or more of the township supervisors; and
2. The fence viewers have executed a certificate stating the value of repairing or rebuilding the fence and the amount of their fees.

Before bringing suit for such sum, however, the complainant shall make demand upon the owner or occupant who shall have one month after such demand within which to make such payment. If suit is commenced to recover such amount, the claimant shall recover interest upon the total sum stated in the certificate at the rate of one percent per month.

**47-26-09. Fence viewers to settle controversy as to rights in fence and duty to maintain.**

When a controversy arises relative to rights in a partition fence or the obligation to maintain the same, either party may apply to a majority of the proper fence viewers who, after notice to each party, may assign in writing to each person that person's share of the fence and direct the time within which each party shall erect or repair that party's share of the fence. If a party refuses or neglects to erect or maintain the part of a fence assigned to that party, the aggrieved party may erect or repair the fence and the value thereof shall be ascertained and recovered in the manner provided in section 47-26-08.

**47-26-10. Party erecting all or more than just share of partition fence may recover.**

If, in a controversy which has arisen between the occupants of adjoining lands as to their rights in a partition fence, it shall appear to the proper fence viewers that either of the occupants, before the making of a complaint, had voluntarily erected all, or more than that occupant's just share, of the fence or otherwise had become proprietor thereof, the other occupant shall pay for as much of the fence as shall be assigned to that occupant to repair and maintain. The amount that shall be paid to the aggrieved party shall be ascertained and recovered as provided in section 47-26-08.

**47-26-11. Application to fence viewers to settle controversy when land is bounded by river or pond.**

When lands of different persons which are required to be fenced are bounded or divided by a river, brook, pond, or creek and the occupant of the land on one side of the river, brook, pond, or creek refuses or neglects to join with the occupant of the land on the other side in making a partition fence on one side or the other of the river, brook, pond, or creek or if the occupants of the lands disagree respecting the fence, the parties may apply to two or more of the proper fence viewers to adjust the controversy.

**47-26-12. Determination of fence viewers when land bounded by water - Notice - Liability of delinquent party.**

The fence viewers to whom an application is made under section 47-26-11 shall proceed to view the premises described in the application forthwith. If such supervisors shall determine that the river, brook, pond, or creek is not, of itself, a sufficient fence and that it is impracticable, without unreasonable expense, to build a fence in the waters upon the true boundary line, they, after giving notice to the parties, shall determine whether the fence shall be erected and maintained on one side, or partially on one side and partially on the other side, of the river, brook, pond, or creek, and shall reduce to writing and sign their determination. If either party refuses to erect or maintain that part of the fence assigned to that party in the determination, the other party may erect and maintain the same and may recover the expense and costs in connection therewith ascertained in the manner provided in section 47-26-08.

**47-26-13. Partition fence erected in body of water erected in equal shares.**

When it is necessary to erect a partition fence in a body of water, such fence shall be built in equal shares unless it is agreed otherwise by the parties. If either party refuses or neglects to build or maintain that party's share of the fence, the other party may build or maintain the same and recover therefor in the manner provided in section 47-26-08.

**47-26-14. Fencing of lands owned by different persons in severalty but occupied in common.**

When lands belonging to different persons in severalty have been occupied in common by such persons without a partition fence between their respective lands and one of the occupants desires to occupy that occupant's part in severalty, that occupant may apply to a majority of the proper fence viewers:

1. If the other occupant or occupants shall refuse or neglect, upon demand, to divide with the applicant the line where the partition fence ought to be built, to divide such line and assign to the parties the parts thereof upon which each party shall build the fence; or
2. If the other occupant or occupants, when the line has been divided, shall refuse or neglect, upon demand, to build a sufficient fence upon the line assigned, to order such fence built.

Upon a division or assignment as provided in subsection 1, the fence viewers, in writing over their signatures, may assign a reasonable time for building the fence, having regard to the season of the year. If either party shall not build that party's part of the fence within the time assigned, the other party, after having completed that party's part thereof, may build the part assigned to the other party or parties and recover therefor the ascertained expense thereof, together with the fees of the fence viewers.

**47-26-15. When partition fence removable.**

When one party ceases to improve that party's land or opens that party's enclosure, that party may take away any part of the partition fence belonging to that party and adjoining the next enclosure unless the owner or occupant of the adjoining enclosure shall pay the sum determined by a majority of the proper fence viewers to be the value of the part of the partition fence belonging to the party who has ceased to improve that party's land or who has opened that party's enclosure. The determination shall be in writing and signed by at least two fence

viewers and the payment shall be made within two months after the value of the fence is ascertained.

**47-26-16. Owner of unenclosed lands to pay value of fence when land is enclosed.**

When unenclosed ground is enclosed, the owner or occupant thereof shall pay one-half of the value of each partition fence standing upon the line between that person's land and the enclosure of any other owner or occupant. If the parties do not agree on the value of the fence, it shall be ascertained by a majority of the proper fence viewers. Such determination shall be in writing and shall be signed by a majority of the fence viewers. If the owner of the unenclosed land refuses or neglects to pay for one-half of the value of the partition fence within sixty days after the value of the fence has been ascertained and demand made, the proprietor of the fence may maintain a civil action for such value and the cost of ascertaining the same.

**47-26-17. If owner determines not to fence land, notice to adjacent landowners - Removal of partition fence.**

If a person shall determine not to fence any of that person's lands adjoining a partition fence that has been divided according to the provisions of this chapter and shall give six months' notice of such determination to all the adjoining occupants of the lands, that person shall not be required to maintain any part of the fence during the time that person's lands are open, and that person thereafter may remove that person's portion of the fence if the owner or occupant of the adjoining enclosure will not pay the sum determined by the fence viewers to be the value of the fence in the manner provided in section 47-26-15.

**47-26-18. Division of fences valid against parties to agreement and their heirs and assigns.**

All divisions of fences or of the lines upon which partition fences are to be erected between unfenced land, which are made by the fence viewers in the manner provided in this chapter and recorded in the office of the recorder, and all such divisions which are made by the owners of adjoining lands in writing, witnessed by two witnesses, and signed and acknowledged by the parties making the division, and recorded in the office of the recorder, shall be valid against and binding upon the parties thereto and upon their heirs and assigns and all the succeeding occupants of the land, and they shall be obliged always thereafter to maintain their respective portions of the fence.

**47-26-19. Fence viewers neglecting to perform duty - Penalty.**

A township supervisor who unreasonably neglects to view a fence after having been requested to do so, or who refuses to perform any other duty required under the provisions of this chapter, shall forfeit the sum of five dollars and shall be liable to the party injured for all damages consequent upon such neglect.

**47-26-20. Duty to maintain partition fence when lands enclosed for pasturage or grazing.**

The provisions of this chapter shall apply to the respective occupants of lands which have been enclosed with fences for pasturage or grazing purposes.