

## UNDERSTANDING AND ADMINISTERING THE MINNESOTA FENCE LAW

---

**ATTENTION:** This information is intended to serve only as a basic explanation and guide to the fence law. As with all materials of this type provided by the Minnesota Association of Townships, this memo does not cover every scenario a township may encounter. Furthermore, this information is subject to change as the law is interpreted by the courts, the Attorney General's Office, or amended by the legislature. Be sure to seek appropriate legal assistance when applying these laws to a specific set of facts.

---

The Minnesota fence law is, to say the least, an interesting piece of legislation that actually predates the formation of Minnesota as a state. In its long history, the fence law has seen remarkably few changes. To some, this consistency is comforting given the rapid changes seen in other areas of the law. On the other hand, there are some who view the fence law as archaic and outdated.

A number of bills have been introduced over the years to modify the law by exempting those owners who have no need of a partition fence from sharing in the obligation to build and maintain such fences. Except for the creation of special law in St. Louis County, these attempts have been unsuccessful. Therefore, except for St. Louis County and those towns that have adopted their own fence law, the obligation of adjoining owners to share equally in the building and maintenance of partition fences remains. Viewers in St. Louis County and towns with their own locally adopted fence law will need to pay special attention to the amended law that applies in their area.

Court challenges have also been brought arguing the fence law is not constitutional because it requires someone to pay half of the costs of a fence they may not need. Except for some individual successes at the district court level (which are not binding in other cases), the appellate courts of this state have upheld the constitutionality of the law. In the most recent published case on this issue, the Minnesota Court of Appeals in Petition of Bailey, 626 N.W.2d 190 (Minn. App. 2001) reaffirmed the constitutionality of the law. "We believe it is clear that the partition fence law serves the broad purposes of mediating boundary, fence, and trespass disputes by requiring adjoining landowners to share the cost of a partition fence." Id. at 195. The court adopted a position of presuming the adjacent property owner is benefited unless they can present evidence to the contrary. Id. at 196. Benefits derived by an owner without livestock include "freedom from intrusion by neighboring livestock and increased privacy." Id.

Town supervisors play a much more significant role in viewing fences than other local government officials. 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.

Additionally, the fence law must be distinguished from local zoning ordinances that may regulate fences. The Minnesota fence law is codified in state law and automatically applies to

partition fence disputes brought under it. On the other hand, local ordinances are developed by the local governing body to address issues within their own community. It is not uncommon for cities of some size to adopt ordinances regulating the placement, heights, and materials used for fencing in their community. While the fence law does apply throughout the state, few cities are even aware of it. Instead, they turn to their own ordinances if they are confronted with a fence dispute. In cities, focusing on local fence ordinances rather than the fence law makes practical sense since most city residents would not want a barbed wire fence built between them and their neighbor. Few town boards have adopted fence ordinances and instead turn toward the operation of the fence law. However, before undertaking a fence viewing, boards should contact the county zoning office to learn if the county has adopted any fencing ordinances. In lakes areas, it is not uncommon for the county to impose setbacks for structures such as fences from shorelands. To the extent possible, the boards need to be aware of these ordinances so they do not direct the owners to do something that violates the county ordinance. If there is an irreconcilable conflict between the fence law and a county ordinance, the board should make the appropriate order under the fence law and notify the county of the conflict.

The following materials are divided into an outline exploring basic elements of the fence law, checklists discussing the procedures involved in resolving the two most common types of fence disputes, and an appendix of forms and special procedures. Use these materials in conjunction with the statutory provisions contained in Minn. Stat. Chap. 344.

## **I. OBLIGATION OF ADJOINING OWNERS**

A. **Equal Shares:** When one or both of adjoining land owners desires the land to be partly or totally fenced and all or part of the land of at least one of the owners is improved and used, both owners are responsible for erecting and maintaining a partition fence between their lands in equal shares. Minn. Stat. § 344.03; Rice v. Kringler, 517 N.W.2d 606, 608 (Minn. App. 1994).

1. “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.”

a. 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.

b. 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.

2. “IMPROVED AND USED”: In order for this statute to apply, all or part of the land of at least one of the owners must be improved and used. No explanation is provided on what constitutes a sufficient improvement and use. However, the Minnesota Supreme Court has held that pasturing cattle is a sufficient improvement and use under the statute. Brom v. Kalmes, 230

N.W.2d 69 (Minn. 1975). In an unpublished decision, the Minnesota Court of Appeals held that the fence viewers do not need to develop specific factual findings on “need.” Kiecker v. Wellington Township Board, 1997 WL 769496 (Minn App. 1997).

3. ST. LOUIS COUNTY: In 1992 special legislation was passed for St. Louis County which exempted certain owners who do not need partition fences from the requirements of the fence law. This special law went into effect the day after the county board approved it on December 22, 1992 (Resolution #1030). Minn. Stat. § 383C.809. See Appendix I for details of the special law.
4. DEPARTMENT OF NATURAL RESOURCES: The DNR is now subject to the requirements of the fence law, and is therefore required to share costs when an adjoining owner desires the land permanently fence for the purpose of restraining livestock. Minn. Stat. § 344.03.
5. LOCAL UNITS OF GOVERNMENT: Lands owned or managed by a local unit of government (LUG) are not expressly included in the obligations of the fence law. Application of the fence law to LUG’s remains uncertain.

a. The Attorney General’s Office has approached this issue by focusing on the type of maintenance and control the LUG exercises over the land. Op.Atty.Gen., 631-h, May 20, 1947. If the maintenance and control of the land by the LUG constitutes a “government function,” the obligations of the fence law do not apply to the LUG. However, if the LUG’s exercise and control of the land constitutes a “proprietary function,” the fence law does apply.

This leaves the viewers with a rule that is easy to state but difficult to apply. In the opinion that provided the rule, the AG stated that a city was not obligated to fence the boundary of a city-operated cemetery since the maintenance and control of the cemetery by the city constituted a governmental function. A later opinion referred to the same rule, but did not discuss whether ownership of an old railroad right-of-way by a village constituted a governmental or proprietary function. Op.Atty.Gen., 631h, June 2, 1964.

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

B. **Optional Exemption:** Town boards may pass a resolution exempting adjoining properties from the obligations of the fence law when those lands, when taken

together, contain less than 20 acres. Minn. Stat. § 344.011. This exemption is particularly important around lakes and residential areas of a town.

- C. **Town Option:** The fence statutes provide an option for towns to adopt its own 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.

## II. POSSIBLE DISPUTES

- A. 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 understand the procedural requirements of the law and the limits of the board's authority over the dispute. The activities of fence viewers are judicial in nature and must strictly accord to the applicable statutes. As is explained elsewhere, a failure to follow proper procedure or to remain within the scope of the viewer's authority could result in significant consequences.
- B. 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 attempt to solicit as much factual information about the dispute as possible in order to help identify the type of disputes involved. The following are the partition fence disputes identified in Chapter 344:
1. Failure to build, rebuild, or maintain a partition fence. Minn. Stat. § 344.04. Refer to **Checklist One**. In St. Louis County refer to **Appendix I**.
  2. Dispute over shares in the fence (i.e., who is responsible for which portion of the fence). Minn. Stat. § 344.06. Refer to **Checklist Two**.
  3. Disagreement over the kind of fence to be built. Minn. Stat. § 344.02, subd. 2 & 3. Refer to **Checklist Three**.

- a. When one of the lands is enclosed by a woven wire fence on all sides except the side forming a division line between the lands, refer to Minn. Stat. § 344.02, subd. 3.
  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. Minn. Stat. §§ 344.11-12.
    - a. As is explained below, fence viewers have no authority to determine boundary lines or otherwise divide land. Therefore, do not attempt to exercise the provision in Minn. Stat. § 344.11 discussing the viewers dividing the land.
  5. A 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. Minn. Stat. § 344.09.
  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, later fences the owner's land and 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. Minn. Stat. § 344.13; Brom, 230 N.W.2d 69; Boenig v. Hornberg, 24 Minn. 307 (1877).
  7. Failure to agree on which side of a stream or pond the partition fence is to be built. Minn. Stat. § 344.10; See Appendix J.
- C. **Boundary Disputes:** Fence disputes frequently involve disagreement over the location of the boundary line. Viewers must always keep in mind that they have no authority to set or determine boundary lines. See e.g., Jones v. Williams, 206 N.W. 654 (Minn. 1925). In most cases, if the viewers learn that the boundary line is in dispute, they 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 sufficiently established, one of the owners can renew the request for the viewers to conduct the initial viewing.

### III. FENCE VIEWERS

- A. **Defined:** Town supervisors, with respect to townships, are the fence viewers. Minn. Stat. § 344.01. If the fence is on the line between two towns, one supervisor from each town will be the fence viewers. Minn. Stat. § 344.14. In unorganized territories, the county commissioners are the fence viewers. Minn. Stat. § 344.19.

- B. **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. Op.Atty.Gen., 631-N, Sept. 20, 1949. Once the process is initiated, the viewers are obligated to make the necessary determinations and take the steps warranted by those determinations within a reasonable time.
- C. **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.
  - 1. 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.
  - 2. 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.
- D. **Payment:** Fence viewers must be paid for their services by the person employing them. 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 in connection with the viewing.
- E. **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. Minn. Stat. § 344.17. 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.

#### IV. KINDS OF PARTITION FENCES

- A. **Legal Fences:** The types of fences considered legal and sufficient are listed in Minn. Stat. § 344.02, subd. 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.” Minn. Stat. § 344.02, subd. 1(e). 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.

A Minnesota Court of Appeals case had confounded the issue of what type of fence can be built under the shared obligation requirement of the fence law (i.e., what can

be considered a legal fence under the fence law). In Petition of Bailey, 626 N.W.2d 190 (Minn. App. 2001), the Minnesota Court of Appeals dealt with a dispute over a 96” fence to confine “farmed cervidae.” Cervidae are essentially deer and related animals such as moose, elk, and caribou. Bailey brought two petitions at different times. The first petition asked the neighbor to contribute the cost to construct a five-strand barbed wire fence toward the construction of the 96” woven wire fence. Instead of contributing cash, the neighbor offered to construct a five wire fence. However, the viewers denied the offer and ordered the contribution of the cost of the materials and labor toward the fence.

While the first petition was being considered, Bailey submitted a second petition asking for contribution on another line for the full 96” fence. The neighbor again offered to construct the fence on his own to save labor costs. This time the viewers agreed and ordered the neighbor to construct his portion of the 96” fence.

The neighbor challenged the order on a number of grounds, including that the viewers had exceeded their statutory authority by ordering a type of fence that is not listed in the statute as a legal fence. Even though a 96” fence designed to keep in elk or caribou is clearly beyond the types of fences listed in the fence law, the court upheld the authority of the viewers in Minn. Stat. § 344.02, subd. 2 to decide the kind of fence to be constructed. The court also pointed out that the farmed cervidae statute specifically requires a confinement fence of at least 96”. Minn. Stat. § 17.452, subd. 10(a)(3).

Even though the court has acknowledged broad authority on the kind a fence the fence viewers can order, the imprudent use of that authority to order expensive specialty fences could lend significant support to the arguments of those wishing to amend the fence law to restrict the cost sharing requirement.

- 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. Minn. Stat. § 344.02, subd. 2.
- C. **Consistency:** If an owner’s 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. Minn. Stat. § 344.02, subd. 3. This essentially creates a right to expect the remaining side of the fence will match the existing fence.

## V. THE IMPORTANCE OF PROPER NOTICE

- A. **Jurisdiction:** Because the duties of fence viewers are judicial in nature, proper notice is necessary in order for the viewers to have jurisdiction over a particular fence dispute. Failure to provide proper notice to the parties will render the viewers’ proceedings **void**. McClay v. Clark, 44 N.W. 255, 256 (Minn. 1890); Miles v. Altoff, 373 N.W.2d 655, 658 (Minn. App. 1985).

1. The court of appeals upheld the notion that failure to provide proper notice will void the proceedings of the viewers. The court 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 received notice of the viewing later admitted that the fence was in need of repair. Rice, 517 N.W.2d at 609.



## CHECKLIST ONE

### FAILURE TO BUILD OR REPAIR

**Minn. Stat. §§ 344.04 - .05**

If one of the owners fails to build or repair a fence as required by the fence law, the other 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 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 by certified mail to each owner at least 14 days before the date set for the viewing. 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 must keep in mind that at least one of the lands involved must be at least partially improved and used. Minn. Stat. § 344.03.

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 owner by certified mail.

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

(5)\_\_\_ If the viewers determine that the fence must be repaired or built, they must notify the delinquent owner of that fact in writing and order the owner to build, repair, or rebuild the fence within a specified reasonable time. The order should be sent to both owners by certified mail. 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 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 owner attempts to build or repair the fence, s/he should notify the viewers of the fact that the delinquent owner did not comply with the order and that he intends to build or repair the fence. One of the supervisors may want to take a look at the fence to confirm that the order was not followed.

The aggrieved 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 owner's right to finish the fence is why the viewers must be extremely cautious when one of the 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 actually result in a suit against the aggrieved owner. For instance, if the aggrieved owner decides to finish the fence after the delinquent owner has failed to comply with the viewers' order, and the delinquent owner can establish that the fence was not built on the actual line, it could result in a trespass action against the aggrieved owner or a dismissal of the aggrieved owner's claim for double the fence costs.

On the other hand, there are times when an 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 owner builds or repairs the other owner's portion of fence, the aggrieved owner deposits the required security with the town treasurer and requests a hearing by the viewers.

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

The notice should be sent by certified mail at least 14 days 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 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 by certified mail.

(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 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 owner does not pay the aggrieved owner the demanded amount within one month, the aggrieved owner may bring a civil action to recover the amount plus interest. Minn. Stat. § 344.05.

## **CHECKLIST TWO 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 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 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 by certified mail to each owner at least 14 days before the date set for the viewing.

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 owners with respect to cost and maintenance work. This usually involves dividing the fence in the middle and assigning each 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 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 owner has voluntarily erected or otherwise become the proprietor of more than the owner's just share in the fence before a complaint was made, the other owner is required to pay for the share of the fence assigned to the other 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 J** 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 by certified mail to each owner.
- (6)\_\_\_ The assignment of shares may be filed with the county recorders office. Once filed, it becomes binding on the parties and upon all succeeding occupants of the lands. Minn. Stat. §§ 344.06; 344.16. Recording the assignment is typically in the best interests of the aggrieved owner in order to avoid problems that could occur upon change of ownership or occupancy of the neighboring property.
- (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 the **Checklist One**.

**CHECKLIST THREE**  
**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 encourage 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 particular attention to the reasons they give as to why they want, or do not want, a particular type of fence be built. The rational 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, preferably by certified mail, return receipt requested.

**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 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 build (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

**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 To Be Built**

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 are 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

**APPENDIX I**



## ST. LOUIS COUNTY SPECIAL LEGISLATION

### Minn. Stat. § 383C.809

In 1992 the legislature passed the following language with regard to fences in St. Louis County:

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.

The key difference between this statute and the fence law requirements is the exemption provided for owners who can establish they have no need for a fence. The following outlines the steps to be followed when responding to complaints regarding an owner's failure to build or maintain a partition fence.

- (1) \_\_\_\_\_ Aggrieved 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 by certified mail to each owner at least 14 days before the date set for the viewing. See Appendix A for sample notice.
  - Notice of the viewing should also be posted at the town's regular posting places.
  - The notice should contain, at the bottom, a statement similar to the following: "If either of the owners or occupants can establish to the fence viewers that he or she has no need for a partition fence, that person will not be required to pay any share of the cost of construction or maintenance of the fence. However, if circumstances change and a need for the fence develops within seven years from the

completion of the fence, the fence viewers may be requested to perform a reevaluation and reassignment of shares of the cost of construction and maintenance.”

- (3)\_\_\_\_\_ If an owner can establish to the viewers that s/he has no need for the fence, the viewers shall not require the owner to pay any share of the construction or maintenance costs.

Be sure to keep detailed records regarding the viewers’ determination of need.

- (4)\_\_\_\_\_ If both owners are found to have need for the fence, the board may assign to each owner a share in the fence and order that it be built or repaired by a specified date. Refer to Minn. Stat. § 344.06 and **Checklist Two** for further information on how to proceed from this point.

Be aware that Minn. Stat. § 383C.809 contains language that possibly expands the role of the viewers when assigning shares in a fence. While Minn. Stat. § 344.06 allows the viewers to assign to each party a share of the fence, Minn. Stat. § 383C.809 allows the “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.” (emphasis added). This language seems to create the authority for the viewers to assign responsibility for a fence on a sliding scale based on needs and benefits of each party.

- (5)\_\_\_\_\_ If within seven years from the completion of the fence the circumstances of the owner, or subsequent owner, changes so that s/he has a need for the fence, the viewers may be requested to perform a reevaluation and reassignment of shares of the cost of construction and maintenance in accordance with Minn. Stat. § 344.06 (“Assigning Shares Checklist”).

## 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 of 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 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 by certified mail to each owner at least 14 days before the date set for the viewing. 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 and mail it by certified mail 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 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).