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NF390

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Nebraska Fence Viewer Statutes

By J. David Aiken, UNL Water and Agricultural Law Specialist

Nebraska statutes provide that a person may collect a portion of the cost of a division fence from the neighbor if the statutory fence viewer procedure is followed. Reproduced below is the complete text of the Nebraska fence viewer statutes. In 1999 the fence viewer statutes were amended to authorize a new category of legal fences, which likely includes electric fences. See §34-115(7) on page 3. If you have questions regarding the meaning or interpretation of the fence viewer statutes, contact an attorney.

§34-101. *Hedge or live fences; planted on line of road or public highway; when allowed.* Whenever any owner or owners, occupier or occupiers of any lands bordering upon any public road or highway, except a street or alley in a town, may wish to plant and cultivate any hedge or live fence, along the margin of his, her, or their land, it shall be lawful for any such person or persons to set and plant any such hedge or live fence precisely on the line of the road or public highway, and also to place on the margin of such road a protection fence, not to occupy more than 6 feet of the margin or edge of said road, and such protection fence, when placed opposite any live fence or hedge actually set and planted, shall be permitted by the county board and all other persons, to remain for the term of seven years; *Provided*, the county board may grant permission in writing to the owner or owners of any live fence or hedge to continue such protection fence any term of time which it may deem necessary.

§34-102. *Division fence; adjoining landowners; apportionment of cost.* When two or more persons shall have lands adjoining, each of them shall make and maintain a just proportion of the division fence between them; *Provided*, however, this shall not be construed to compel the erection and maintenance of a division fence where neither of the adjoining landowners desires such division fence. Unless the owners of such lands adjoining shall have agreed otherwise, such fence shall be a lawful fence, as defined in §34-115.

§34-103. *Division fence; erection by landowner; collection of one-half cost from adjoining owner; hog and sheep tight fences.* Any landowner who shall erect a division fence may demand and collect by civil suit from such adjoining landowner one-half the reasonable value of such division fence. Any landowner putting in a hog and sheep tight fence, where the adjoining landowner does not desire to use or pay for such a fence, may demand and receive from such adjoining landowner one-half the cost of a lawful wire fence as defined in §34-115. If such adjoining landowner subsequently wishes to use his land abutting on said fence as a hog or sheep pasture he shall thereupon pay his half of the entire cost of the hog and sheep tight fence.

§34-104. *Division fence; value and proportion; determination; fence viewers.* The value of such fence, and the proportion thereof to be paid by each adjoining landowner and the proportion of the division fence to be made and maintained by each adjoining landowner shall be determined by fence viewers as hereinafter provided for.

§34-105. *Disputes; settlement by fence viewers.* If disputes arise between the owners of adjoining lands concerning the proportion of fence to be made or maintained by either of them, such disputes shall be settled by fence viewers. In such case it shall be the duty of the fence viewers to distinctly mark and define the proportion of the fence to be made or maintained by each.

NRS §34-106. *Fence viewers; panel; qualifications.* Upon request of any landowner, the county clerk shall appoint and maintain a panel of at least six individuals to serve as fence viewers, but the clerk may not compel membership on the panel of fence viewers. Fence viewers shall be owners of agricultural land in the county where the dispute has originated, and at least three members of each panel shall be owners of livestock. Fence viewers shall not be considered employees of the county and shall receive compensation only as provided in §34-110. Upon

resignation of a member, the clerk shall appoint another individual to fill the vacancy.

NRS §34-107. *Controversy; determination by fence viewers; assignment; notice; procedure.* Upon receipt of a written request of any landowner, the county clerk shall assign three fence viewers from the panel of fence viewers appointed under §34-106 to determine any controversy arising under §§34-101 to 34-117. None of the fence viewers assigned shall be related by blood or marriage to the contending parties nor be financially interested in the outcome of the dispute. If the county clerk is unable to assign three fence viewers for any reason, the clerk shall notify the county sheriff who shall serve in place of the fence viewers or as one of the fence viewers, and all references to fence viewers in this section and §§34-104 to 34-111 shall be construed to mean the county sheriff if the sheriff is serving in place of the fence viewers. Before assigning the fence viewers, the clerk shall first require the landowner to show proof that notice has been given to adjoining landowners. Such notice shall be served upon any nonresident landowner by publication in a newspaper published in the county where the land is situated or by delivering a copy of the letter requesting the assignment of fence viewers to the occupant of such adjoining land or the landowner's agent in charge of such land. The fence viewers so assigned shall examine the premises and hear the allegations of the parties. The decision of any two of them shall be final upon the parties to such disputes and upon all parties holding under them.

§34-108. *Controversy; determination; order; where filed; appeal.* The fence viewers shall determine by written order the obligations, rights, and duties of the respective parties in the controversy, shall assign to each landowner the part of the fence which the landowner shall erect, maintain, repair, or pay for, shall fix the value, including the costs of material and labor, and shall prescribe the time within which the erection, maintenance, or repair shall be completed or paid for. The fence viewers shall file the order forthwith in the office of the county clerk. Any person affected by an order of the fence viewers may appeal to the district court within 10 days after the date such order is filed.

§34-109. *Disputes; fence viewers; power to compel testimony and administer oaths.* Fence viewers may examine witnesses on any and all questions submitted to them, and shall have power to issue subpoenas for, and administer oaths to such witnesses.

§34-110. *Fence viewers; fees; how paid.* Fence viewers shall be entitled to thirty dollars each for any one dispute plus expenses, to be paid in the first instance by the party requiring the service. All expenses of the view shall be borne equally between the parties except in case of view to appraise damages for neglect or refusal to make or maintain a just proportion of the division fence, in which case the cost of view shall be paid by the party in default and may be recovered as a part of the damage assessed.

§34-111. *Division fence; liability for erection, repair, or maintenance; reimbursement; procedure.* If any person who is liable to contribute to the erection, maintenance, or reparation of a division fence by order of the fence viewers fails to appeal the order and neglects or refuses to make and maintain his or her proportion of such fence within the time prescribed in the order filed with the county clerk as provided in §34-108, the party so neglecting or refusing shall be liable to the party injured for all damages which thereby accrue. The fence viewers shall provide for the erection or repair of the same at the expense of the party so defaulting. The fence viewers shall require the complaining landowner to deposit with the fence viewers a sum of money in the amount prescribed in the order sufficient to pay for the erection, repair, or maintenance of the fence together with the fees and costs of the fence viewers. The complaining landowner may be engaged by the fence viewers to perform the erecting, repair, or maintenance of the fence. Unless the party in default reimburses the complaining landowner within thirty days following the completion of the erection, repair, or maintenance of the fence, the fence viewers shall certify the amount deposited by the complaining landowner to the county treasurer who shall collect the amount as a special assessment against the real estate owned by the party or parties in default. The county treasurer shall reimburse the injured party the amount certified upon collection of the assessment. If the party in default is an agency of the State of Nebraska, the injured party may seek reimbursement pursuant to §81-1170.01.

§34-112. *Division fence; injury or destruction; repair.* Whenever a division fence shall be injured or destroyed by fire, floods, or other casualty, the person bound to make and repair such fence, or any part thereof, shall make or repair the same, or his just proportion thereof, within ten days after he shall be thereto requested by any person interested therein, such requisition to be in writing and signed by the party making the same.

§34-113. *Division fence; injury or destruction; repair; cost.* If such person shall neglect or refuse to make or repair his proportion of such fence for a period of 10 days after such request, the party injured may make or repair the same at the expense of the party so refusing or neglecting, to be recovered with cost of suit.

§34-114 Repealed. Laws 1994, LB 882, §6.

§34-115. *Lawful fences, defined.* Lawful fences of different kinds used for fence to enclose lands shall be as hereinafter defined.

(1) A rail fence shall consist of at least six rails, such rails to be secured by stakes at the end of each panel, well set in the ground, with a rider on the stakes.

(2) A board fence shall consist of not less than three boards of at least 5 inches in width and 1-inch thick; such boards to be well secured to posts; the posts to be not more than eight feet apart.

(3) A rail and post fence shall consist of at least three rails, well secured at each end to posts; the posts not to be more than 10 feet apart.

(4) A pole and post fence shall consist of not less than four poles, to be well secured to posts; the posts not to be more than 7 feet apart.

(5) A wire fence shall consist of at least four wires, of a size not less than number nine fencing wire, to be well secured to posts, the posts to be at no greater distance than one rod from each other; and there shall be placed between every two of the posts one stake or post to which the wire shall be attached. Any of such wires may be a barbed wire composed of two or more single wire strands twisted into a cable wire with metal barbs thereon averaging not more than 5 inches apart, each of such single wire strands to be of a size not less than number 12 and one-half gauge fencing wire.

(6) A hog and sheep tight fence shall consist of one barb wire at the ground, next above, one section of woven wire 26 inches high, consisting of not less than seven strands, the upper and lower strands to be number nine wire, intermediate strands to be number 11 wire with stays not more than twelve

inches apart, and at the top, three barb wires at intervals of six, nine, and nine inches; and the whole shall be securely fastened to posts at no greater distance than one rod from each other, and there shall be placed between every two of the posts one stake or post to which the wire shall be attached.

(7) All other fences made and constructed of boards, rails, poles, stones, hedge plants, or other material which upon evidence is declared to be as strong and well calculated to protect enclosures and is as effective for resisting breaching stock shall be considered a lawful fence.

§34-116. *Lawful fences; height and spaces.* The fences described in §34-115 shall be at least 4 1/2 feet in height; and in the construction of such fences the spaces between the boards, rails, poles, and wires shall not exceed 1 foot each, measuring from the top.

§34-117. *Lawful fences; Warner's Patent; requirements.* Fence known as Warner's Patent shall be at least four and one-half feet in height, and consist of not less than five boards; such boards to be of a width of not less than 5 inches, and 1 inch thick.

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