



Minnesota Fence, Boundary, and Animal Control Law

Winston W. Grant
Extension Economist
Legal Affairs

This folder summarizes Minnesota statutes and case law on one's rights and responsibilities with regard to partition fences (including the doctrine of adverse possession or "squatters' rights"), snow fences, railroad fences, and domestic animal control.

PARTITION FENCES

Adjoining landowners may agree to divide rights and responsibilities regarding fences along their property lines as they see fit. If such an agreement is in writing, witnessed by two persons, signed and acknowledged, and filed with the county recorder, it is valid against the parties and against succeeding owners of the land. An oral contract by adjoining landowners for the division of fence rights and responsibilities that the parties have acted or relied upon is binding on them, but not on future owners or lessees of the land who have not acted or relied on the contract.

When adjoining property owners cannot reach agreement on their respective rights and duties concerning partition fences along their boundaries, the provisions of Chapter 344 of Minnesota Statutes and the decisions of local fence viewers are controlling. The decisions of the fence viewers are binding on the parties and on succeeding owners of the land.

Fence viewers are local officials who administer Minnesota fence laws. Town supervisors, city aldermen, or commissioners of public works in cities with a commission form of government, and statutory city trustees are fence viewers. In counties not organized into towns, the county commissioners are fence viewers.

Legally sufficient partition fences are specified by Minnesota statutes as one of the following:

1. 32" (or more) woven wire with 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 4 inches from the woven wire and the second wire being above and not more than 8 inches from the first wire.
2. 40" (or more) 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 4 inches from the woven wire.
3. 48" (or more) woven wire and one barbed wire not more than 4 inches above the woven wire firmly fastened to well-set posts not more than one rod apart.
4. Four (or more) 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 not less than 12 nor more than 16 inches from the ground.
5. All fences consisting of rails, timbers, wires, boards, stone walls, or combinations of these or streams, lakes, ditches, or hedges considered by fence viewers to be the equivalent of fences described in 1 through 4.

When an owner of improved or used land desires that that land be fenced, the fence will be built and maintained as a partition fence. This means that the adjoining landowners will build and maintain the fence in equal shares. The effect of this law is that if either of two adjoining landowners want a fence built between their property, the fence will be built and the costs will be shared equally.

Whether land is "improved" within the meaning of this statute is a question of fact, but using it as a pasture is considered "improved."

If one party fails to build or maintain a fence, the aggrieved party may complain to the fence viewers. If the viewers determine that the existing fence is insufficient or a new fence is necessary, they shall notify the delinquent owner to that effect in writing and direct him or her to build, repair, or rebuild the fence within a time they consider reasonable. If the delinquent owner fails to comply with these directions, the complainant may build the fence at his or her own expense, and the delinquent party will be required to reimburse the complainant for a portion of the expense.

If adjoining landowners disagree as to the kind of fence, the matter can also be referred to the fence viewers, who will then determine the kind and order it to be built. If one landowner is enclosed on three sides with a woven wire fence, then each landowner shall erect a fence of like character and quality along the division line for one-half the length and shall maintain the half he or she has built. This does not mean, however, that an adjoining landowner is to share construction expenses only if it is a woven wire fence.

A landowner building an enclosure after the adjoining landowner has erected a division fence is not removed of the obligation to contribute to the partition fence. For example: You own livestock and your neighbor grows corn. Your neighbor builds a division fence on the property line. Then you enclose your cattle within your property. Enclosing or corraling your cattle doesn't excuse you from paying your share of the construction and maintenance costs on the division fence.

If a controversy arises over the right of the respective owners of a partition fence, or their obligation to maintain it, either party may apply to the fence viewers. After notice to the parties, the fence viewers may assign each a share of the fence and direct a time within which it must be constructed or repaired. This assignment may be filed with the county recorder and is thereafter binding on succeeding occupants of the land. If either party fails to construct or maintain the part of the fence assigned to him or her, the other party may construct or maintain it and will be entitled to recover twice the construction or maintenance cost.

When it appears to the fence viewers that one adjoining owner or occupant voluntarily erected or otherwise became proprietor of more than a just share before a complaint was made, the other occupant shall pay for as much of the fence as is assigned to him or her to repair and maintain.

Where land is divided by a stream that is not a satisfactory fence and it is impracticable to partition on the true boundary line, the viewers may decide on which side of the stream to erect the fence or that it should be erected partly on each side.

When property that was owned in common is now owned separately and one of the occupants wants a fence along the dividing line, it may be divided and assigned by fence viewers under these provisions of law.

Upon division and assignment of shares, viewers may set a reasonable time, taking into consideration the season of the year, for building a fence. If one party fails to build within the time assigned, the other party may build the entire fence and recover double the expenses incurred, plus the fees of the fence viewers.

When unenclosed land is initially enclosed, the owner must pay one-half the value of each partition fence extending upon the line between his or her land and the land of another. If the parties do not agree, the value is determined by fence viewers. If the payment is not made within 60 days after the value is determined and demanded, it may be recovered along with the fence viewers' costs in a civil action.

Adverse Possession or "Squatter's Rights"

The doctrine of adverse possession, commonly referred to as "squatter's rights," provides generally that if a party is in possession of another's land continuously for a period of 15 years, he or she will receive fee simple absolute title to the land if such possession was adverse to the interests of the true owner. To establish title by adverse possession, it must be shown that possession was hostile and under claim of right and that it was actual, open, continuous, and exclusive. If, however, one has the owner's consent to use the land, there can be no adverse possession. If a party in adverse possession transfers that interest to a third party, the period that each was in possession is added together or "tacked" to determine the required 15-year period.

Improperly placed partition fences commonly present situations where you may gain or lose property because of the doctrine of adverse possession. For example, suppose the true boundary line between you and your neighbor runs up a rough, wooded hill onto a ridge where there is good open land suitable for farming. You build a fence between the properties but because of the rough ground and to make construction easier, the fence wanders back and forth over the true boundary line. Then your neighbor builds a rough road to get machinery and animals up the hill to the ridge. The road is partly on your property. You both treat the fence as the property line and your neighbor uses the "hill road" for 20 years. At that point your neighbor could bring a court action and have the fence adjudged the true property line. Then any property that had been yours but was on the neighbor's side of the fence would be your neighbor's with good title.

A real situation very similar to the above example went to court in Winona County in December 1979. The case arose because of a dispute as to each party's contribution to a partition fence. The net result was that one party lost about 10 acres of land to the other by adverse possession. This case was being considered for appeal to the Minnesota Supreme Court at the time of this writing.

Other Fence Law

Other fence law situations concern snow fences, railroad fences, and special agricultural fences.

Snow Fences. Generally, whenever the State of Minnesota or any of its agencies or subdivisions acquires the right to build a public road, an easement

for the erection of temporary snow fences on adjoining land follows automatically. Compensation for the snow fence easement is included in the road easement compensation. The state government unit must file a disclaimer if it does not want a snow fence easement with its road easement.

Railroad Fences. Railroads are required to build and maintain good and substantial fences on each side of all their lines and to put up cattle guards at all roads and street crossings, except where necessary business requires that they be left open. If land is enclosed on other sides by woven wire, the railroad must build a fence of like kind. Railroads are held to the exercise of ordinary diligence in building and maintaining these fences. The purpose is to keep cattle off the tracks.

Failure of a railroad to build the required fences results in liability for all resulting damage, including all domestic animals killed. If the railroad does not pay within 30 days, the costs are doubled unless the railroad has tendered an amount in excess of the amount recovered.

The owner of land abutting a railroad may serve notice on the company through any of its station agents between April 1 and October 1 of any year requiring the construction of a fence between his or her land and the railroad right of way. If the railroad does not construct the fence within 40 days after notice, the landowner may recover twice the cost of constructing the fence, plus costs and an attorney's fee, whether or not the landowner has constructed the fence. Failure to serve notice does not relieve the railroad company from liability for damages.

A person owning land abutting a railroad may construct at his or her own expense crossings (over, under, or across) or drains as long as they do not impair the use of the railroad. The landowner must notify the nearest station agent in advance, and the railroad may then construct the crossing with the landowner paying reasonable costs of construction.

When the railroad constructs a fence with a gate for the exclusive use of a landowner, and the railroad provides the landowner with a key, the railroad is not liable when the gate is left open through no fault of its own.

Special Agricultural Fences. Occasionally, the Minnesota Legislature will enact a geographically specific fence law. For example, a 1978 statute authorized the commissioner of agriculture to issue permits for the construction of agricultural fences along trunk highway rights-of-way in the town of Zumbrota.

CONTROL OF DOMESTIC ANIMALS

Minnesota statutes and case law are consistent with what is commonly called the "fence-in law" followed in most states today, where the land is commonly used more for growing crops than for raising livestock. The gist of this type of law is that it is the legal duty of the owner of livestock to keep it off the property of others. Owners who fail to use reasonable care in restraining their animals may be held liable for damages the animals do to the property of others. The degree of liability will vary according to whether a situation is one of animals doing damage or animals at large. In some cases, failure to exercise the required control over livestock can result in criminal penalties.

Animals Doing Damage

The owner or occupant of land may seize any animal doing damage to his or her property and keep it until damages have been appraised and until it returns to the enclosure or immediate care of its owner or keeper.

If he or she knows the animal's owner, the person holding the animal must give the owner notice within 24 hours if the owner resides in the same town, or within 48 hours if the owner resides in another town in the same county. The notice must specify the time and place the animal was seized, the number of animals, and the place of their detention, and it must designate a time and place for application to a justice of the peace for appointment of appraisers to assess the damages.

If the owner is unknown or does not reside within the county, the person holding the animal must apply for appraisers within 24 hours after seizing the animal and no notice is required.

Upon receiving an application for appraisers, a justice shall appoint three disinterested landowners of the town where the damage was done to appraise the damage for which the justice shall receive \$.50.

If the person holding the animal fails to apply for appointment of appraisers, the owner of the animals may apply.

The appointed appraisers view the damage, hear the evidence of any witnesses, and then certify the amount of damage and the cost of keeping the animal (which shall not exceed \$1 per day). Their determinations are conclusive.

At any time before proceedings for appraisal are begun, or before an action for damages is brought, the owner of the animal may offer to pay the amount of damage the owner believes was sustained. If this tender is accepted, no further damages will be recovered. If it is refused, and the person whose property was damaged fails to show that the damage

suffered was greater than what was tendered, then the property owner must pay the costs and disbursements of the animal owner and cannot recover any costs, disbursements, or expenses.

Unless the damage sustained and the fees of the appraisers and justice are paid within 24 hours after appraisal, the person seizing the animal must put it in the nearest pound or some secure enclosure in the same town to remain there until the animal is sold or until costs are paid. The animal must be fed, the expense of which is added to costs.

If the animal is impounded, the poundmaster will keep the animal, and unless it is discharged according to law within six days, he will sell it at public auction to pay the damages, fees, and costs. If there is no pound within the town, the animal is kept in an enclosure and sold by the sheriff. The purchaser of a seized animal sold by either the poundmaster or the sheriff must keep the animal for at least two months, during which time the owner may redeem the animal by paying all costs and charges, and the selling price, plus an interest rate of 12 percent.

It is a misdemeanor to take a seized animal without consent of the poundmaster or sheriff and without first paying damages and costs, unless one has authority of law.

Any person may—and every peace officer shall—seize and confine domestic animals (cattle, horses, mules, sheep, swine, or domestic fowl) running at large, trespassing, or doing damage upon another's land or upon public property. Any person who knowingly permits a domestic animal to run at large or trespass in a city is liable to the person aggrieved for three times the damage sustained.

Animals at Large

It is unlawful to permit animals to run at large. The herding of cattle, horses, asses, mules, sheep, swine, or goats upon land against the will of the landowner is called running at large. Running at large also means permitting an animal to stroll, wander, rove, or ramble at will without restraint or confinement.

Any owner of a domestic animal who knowingly permits it to run at large is liable to the person aggrieved for three times damages. If, while running at large, your animal causes injury to another, then

you are liable for the resulting damage. If you allow your horse to run loose on the highway and a motorist runs into the horse, you are liable to the motorist for three times the amount of damage suffered.

Farmers may be liable for criminal proceedings, in addition to civil damages, for the negligent trespass of their animals if their land is inadequately fenced.

The owner of any stallion over 1 year of age, bull over 9 months of age, boar or ram over 3 months of age, or breach cattle (those apt to break fences or be wild) who allows such an animal to run at large forfeits \$5 per day for every such animal to the town where the animal is running. "Running at large" means the animal is not picketed, confined in a corral, or otherwise restricted by a legal fence. The chairman of the town board should notify the owner that the animal is at large and, if it is not immediately confined, should bring suit to recover the \$5 and have the animal sold. After first deducting the costs and expenses of suit, any remaining money is paid into the town treasury for use of the road and bridge fund.

If the owner of the animal is unknown, the town chairman shall have it confined for 3 days, then sold at public auction, if it is not claimed.

If the owner is notified and permits the animal to continue to again run at large, the town chairman shall have the animal taken and castrated in the usual manner. There is then a lien upon the animal for the expenses incurred, and this may be recovered from the owner in a civil action. Any 3-month-old ram may be castrated without liability by any person among whose sheep it is found.

Criminal Acts

Whoever intentionally commits any of the following acts is guilty of a misdemeanor:

- Trespasses or permits animals under his or her control to go upon a railroad track.
- Permits domestic animals or fowl under his or her control to go upon the land of another within a city.
- Takes any animal upon a public conveyance without the consent of the operator.

Editor: Dave McAllister

Artist: Rose Mauch

This information is provided by the Minnesota Agricultural Extension Service and the University of Minnesota Department of Agricultural and Applied Economics as a public service and is not intended to replace the advice of legal counsel.

Issued in furtherance of cooperative extension work in agriculture and home economics, acts of May 8 and June 30, 1914, in cooperation with the U.S. Department of Agriculture. Norman A. Brown, Director of Agricultural Extension Service, University of Minnesota, St. Paul, Minnesota 55108. The University of Minnesota, including the Agricultural Extension Service, is committed to the policy that all persons shall have equal access to its programs, facilities, and employment without regard to race, creed, color, sex, national origin, or handicap.

10 cents

