

A photograph of a wooden fence in a rural setting. The fence is made of three horizontal rails and vertical posts, running diagonally across the frame. In the background, there are bare trees and a green field under a cloudy sky.

**FENCES MAKE GOOD  
NEIGHBORS?  
WISCONSIN FENCE LAW**

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# Chapter 90 - Fences

## Wisconsin Fence Law Issues

- When is a “fence” required?
- Who pays for the fence?
- What is a legal “fence”?
- How are disputes resolved between adjoining landowners?



# Chapter 90 - Fences

- Wisconsin fence case law goes back to when Wisconsin was still part of the Michigan territory – very old law
- Chapter 90 is agricultural in nature and the central theme of the law is that when one neighbor is engaged in farming or grazing, a fence is required
- However many towns, villages and cities also have ordinances regulating fences in residential areas

# Chapter 90 - Fences

- The law is intended for the benefit of the neighbors
  - Keep livestock off of neighbors land to prevent unintended damages
- Neighbors encouraged to reach agreement
  - Can agree not to have fences; or
  - Can agree upon a fencing arrangement different from what Chapter 90 specifies
  - It is best to come to a mutual agreement and then to maintain your fences in good repair
- If neighbors cannot agree then they call upon the town board supervisors as “fence viewers”

# Fences ≠ Boundary Lines

- Placement of a fences does not mean it is a boundary line
- Boundary line disputes need to be resolved by a surveyor to determine the actual property boundary lines
- “Fence Viewers” (municipal officials) can settle fence disputes on agricultural lands under Chapter 90, but they do not have the authority to settle boundary line disputes

# When is a fence required?

- Wis. Stat. s. 90.03 provides that if either adjoining landowner uses the property for ***farming or grazing***, a partition fence is required
  - Both neighbors must maintain their portion of the fence and keep fence in good repair
- However, the neighbors may reach an agreement to use markers instead of a fence, or agree not to have or maintain a fence at all



# When is a fence required?

- Partition fence is required when *farming or grazing* is involved
  - No statutory definition of farming or grazing
- Disputes happen when one neighbor changes the use of land
  - Two neighbors both have wooded lands, a fence is not legally required
  - But if Neighbor Y chooses to graze cattle in his or her woods, both Neighbor Y and Neighbor Z would then have to build and maintain a fence between their land, under the law, unless they both agree otherwise

# When is a fence required?

- Wis. Stat. s. 90.035 provides that if one of the neighbors is the state or local unit of government partition fence law can apply
- But the law only applies if **both** parties agree that it applies
  - In other words, the state or local unit of government **is not** subject to Chapter 90 **unless** it so agrees



# When is a fence required?

- Wis. Stat. s. 90.03 also provides that when a fence is required and agreed to by both adjoining neighbors are responsible for erecting and maintaining their half of a fence
  - Requirement maybe modified if agreed to by both neighbors
- Wis. Stat. s. 90.04 provides that if the neighbors do not maintain their portion of the partition fence they cannot claim damages if animals trespass

# Who pays for the fence?

- Wis. Stat. s. 90.05 provides that responsibility for the cost of a fence is divided evenly between two adjoining neighbors
  - Neighbors may agree upon another arrangement
- Partition fence agreements really should be in writing
  - If in writing and signed by the owners and two witnesses, notarized and filed with the town clerk then agreement will be binding on the owners, their heirs and assigns
  - Oral agreements not binding on heirs and assigns

# Who pays for the fence?

- Wis. Stat. s. 90.07 governs which neighbor is responsible for a given portion of the fence
  - The rule of thumb when dividing responsibility between neighbors is you stand on your property line, facing the neighbor's property, and you will ordinarily have the duty to maintain the half of the fence on your right, with the neighbor maintaining the half on the left
  - However, this may not be practicable, and another arrangement may be called for in light of past practice or challenging features, such as water

# Who pays for the fence?

- Where a property boundary is a river, brook, pond or creek it may not be feasible to build the fence on the true boundary
- Wis. Stat. s. 90.09 provides that if the water is sufficient as a fence, then a fence does not need to be built
- If a fence is needed but cannot be built in the water, then the fence may be built on either side or alternating sides of the water with the neighbors partitioning the cost



# What is a “Legal Fence”?

- Wis. Stat. s. 90.02 provides that a “legal fence” can be:
  - Woven wire
  - Woven wire with barbed or high tensile wire
  - Boards
  - Board and wire
  - Wire and picket
  - Barbed wire
  - High tensile wire
  - Electric (both agree in writing, 2 wires)
  - Other (water)

# What is a “Legal Fence”?

- Generally speaking, Wis. Stat. s. 90.02(3) provides that fences, must be 50 inches high with the bottom not over 4 inches from the ground
  - However, shorter heights apply to electric fences, barbed wire fences and high tensile fences



# What is a “Legal Fence”?

- Other specifics for woven or barbed wire:
  - The distance between the woven part and the barbed or high tensile wire may be no more than 6 inches
  - The space between vertical strands of woven wire may be no more than 8 inches, and the space between the cross wires may be no more than 12 inches
  - The vertical strands of woven wire must be no smaller than No. 12 wire, and the cross wires must be no smaller than No. 16
  - The spacing between the barbed or high tensile wires may not exceed 8 inches
  - Wires must be stretched and securely fastened to posts no more than 16 feet apart



# What is a “Legal Fence”?

- Other types of fences
  - “Board” fences
    - Must have at most a 6 inch spacing to a height of 30 inches, then no more than a 10 inch spacing is allowed
    - Posts are spaced no more than 8 feet apart
  - “Board/wire” fences are allowed but the law requires a minimum of two boards with 3 barbed or high tensile wires above
    - Spacing between the boards may not be more than 6 inches
    - Spacing between the wires may not exceed 8 inches
    - The space between the top board and bottom wire may not be more than 6 inches
- The posts may not be more than 8 feet apart



# What is a “Legal Fence”?

- Other types of fences (continued)
  - “Wire and picket” fences may consist of at least 3 wires with pickets interwoven or fastened to the wires
    - Pickets must be at least 4 feet long, spaced no more than 6 inches apart
    - Wires must be No. 12 or thicker
    - Posts are spaced no more than 16 feet apart



# What is a “Legal Fence”?

- “Electric fences” are allowable if both neighbors agree in writing
  - Two strands of strong and tightly stretched wires are required with the top wire 34-36 inches high, measured at the posts. Note that this mandates a different height from the general 50 inch requirement
  - Wires are fastened with insulators to posts that are no more than two rods (33 feet) apart
  - Electric fences may also be of high tensile wire with posts no more than 20 feet apart



# What is a “Legal Fence”?

- “Barbed wire fences and high tensile wire fences” need four evenly spaced wires, with the top wire at least 48 inches high
  - For barbed wire fences, posts are spaced no more than 16 feet apart
  - For high tensile wire fences, posts are spaced no more than 20 feet apart. The posts may be of steel of any thickness or wood at least 3 inches in diameter
- “Farm-raised deer fences” Wis. Stat. s. 90.20 special fencing requirements for fencing of farm-raised deer

# Resolving a Dispute

- Neighbors should try to resolve fence disputes between themselves, using the law as a guide
- If a dispute cannot be resolved, either neighbor may contact their town supervisors who are empowered as fence viewers to resolve fence disputes (but not boundary disputes), see Wis. Stat. s. 90.07 and 90.09
- Town supervisors charge fees to each of the neighbors for resolving the disputes, Wis. Stat. s. Sec. 90.15
- If the land is in two towns, a fence viewer from each town is appointed, and each town clerk must maintain a record of the decision



# Conclusion

- Good fences can make good neighbors
- Do not assume that a fence is a boundary line
- Maintain fences
  - Annual or semi-annual inspections
- Get agreements in writing

