

DIVISION FENCE STATUTES

- Administration: These sections reference the Department of Agriculture's Farm Mediation Service and are provided for informational purposes only.
- Revisions: These statutes were last revised in the 2010 session of the Nebraska Legislature.
- Rules: The Department of Agriculture has no authority to promulgate regulations under these statutes.

Index

<u>Section</u>	<u>Subject</u>
34-101	Legislative findings.
34-102	Division fence; adjoining landowners; construct and maintain just proportion of fence.
34-112	Division fence; injury or destruction; repair.
34-112.01.	Division fence; entry upon land authorized.
34-112.02.	Division fence; construction, maintenance, or repair; notice; court action authorized; hearing; mediation; costs.
34-112.03.	Division fence; changes made by Laws 2007, LB 108; applicability.

34-101. Legislative findings. The Legislature finds the duty of adjoining landowners for the construction and maintenance of division fences to be beneficial to the public interest and welfare. Such benefits are not confined to historical and traditional societal benefits that accrue from the proper constraint of livestock, but also include suppression of civil disputes and public and private nuisances and the protection of public safety. Division fences promote the peace and security of society by the demarcation of rural boundaries, physical separation of conflicting land uses, enhancement of privacy, diminishment of frequency of public burden imposed by incidences of trespass and adverse possession, and the mitigation of impacts of conflicting land use intrusion into those areas of the state devoted to agricultural and horticultural use.

34-102. Division fence; adjoining landowners; construct and maintain just proportion of

fence. (1) When there are two or more adjoining landowners, each of them shall construct and maintain a just proportion of the division fence between them. Just proportion means an equitable allocation of the portion of the fenceline to be physically constructed and maintained by each landowner or, in lieu thereof, an equitable contribution to the costs to construct and maintain the division fence to be made by either landowner. Unless otherwise specified in statute or by agreement of the parties, such equitable allocation shall be one which results in an equal burden of construction and maintenance of the division fence. This section shall not be construed to compel the erection and maintenance of a division fence if neither of the adjoining landowners desires such division fence.

(2) Unless the adjoining landowners have agreed otherwise, such fence shall be a wire fence as defined in subdivision (5) of section 34-115.

34-112. Division fence; injury or destruction; repair. Whenever a division fence is injured or destroyed by fire, floods, or other casualty, the person bound to construct and maintain such fence, or any part thereof, shall make repairs to the same, or his or her just proportion thereof, as provided in section 34-102.

34-112.01. Division fence; entry upon land authorized. An owner of land may enter upon adjacent land owned by another person to construct, maintain, or repair a division fence pursuant to sections 34-102 and 34-112, but such access shall be allowed only to the extent reasonably necessary to construct, maintain, or repair the division fence. This section does not authorize any alterations to adjacent land owned by another person, including the removal of trees, buildings, or other obstacles, without the consent of the adjacent landowner or a court order or the removal of any items of personal property lying thereon without the consent of the adjacent landowner or a court order.

34-112.02. Division fence; construction, maintenance, or repair; notice; court action authorized; hearing; mediation; costs. (1) Whenever a landowner desires to construct a division fence or perform maintenance or repairs to an existing division fence, such landowner shall give written notice of such intention to any person who is liable for the construction, maintenance, or repair of the division fence. Such notice may be served upon any nonresident by delivering the written notice to the occupant of the land or the landowner's agent in charge of the land. The written notice shall request that the person liable for the construction, maintenance, or repair satisfy his or her obligation by performance or by other manner of contribution. After giving written notice, a landowner may commence or complete construction of a division fence, or commence or complete maintenance or repair upon an existing division fence, in which cases any cause of action under this section and sections 34-102, 34-112, and 34-112.01 shall be an action for contribution.

(2) If the person so notified either fails to respond to such request or refuses such request, the landowner sending notice may commence an action in the county court of the county where the land is located. If the landowners cannot agree what proportion of a division fence each shall construct, maintain, or repair, whether by performance or by contribution, either landowner may commence an action, without further written notice,

in the county court of the county where the land is located. An action shall be commenced by filing a fence dispute complaint on a form prescribed by the State Court Administrator and provided to the plaintiff by the clerk of the county court. The complaint shall be executed by the plaintiff in the presence of a judge, a clerk or deputy or assistant clerk of a county court, or a notary public or other person authorized by law to take acknowledgments and be accompanied by the fee provided in section 33-123. A party shall not commence an action under this subsection until seven days after giving notice under subsection (1) of this section and shall commence the action within one year after giving such notice.

(3) Upon filing of a fence dispute complaint, the court shall set a time for hearing and shall cause notice to be served upon the defendant. Notice shall be served not less than five days before the time set for hearing. Notice shall consist of a copy of the complaint and a summons directing the defendant to appear at the time set for hearing and informing the defendant that if he or she fails to appear, judgment will be entered against him or her. Notice shall be served in the manner provided for service of a summons in a civil action. If the notice is to be served by certified mail, the clerk shall provide the plaintiff with written instructions, prepared and provided by the State Court Administrator, regarding the proper procedure for service by certified mail. The cost of service shall be paid by the plaintiff, but such cost and filing fee shall be added to any judgment awarded to the plaintiff.

(4) In any proceeding under this section, subsequent to the initial filing, the parties shall receive from the clerk of the court information regarding availability of mediation through the farm mediation service of the Department of Agriculture or the state mediation centers as established through the Office of Dispute Resolution. Development of the informational materials and the implementation of this subsection shall be accomplished through the State Court Administrator. With the consent of both parties, a court may refer a case to mediation and may state a date for the case to return to court, but such date shall be no longer than ninety days from the date the order is signed unless the court grants an extension. If the parties consent to mediate and if a mediation agreement is reached, the court shall enter the agreement as the judgment in the action. The costs of mediation shall be shared by the parties according to the schedule of fees established by the mediation service and collected directly by the mediation service.

(5) If the case is not referred to mediation or if mediation is terminated or fails to reach an agreement between the parties, the action shall proceed as a civil action subject to the rules of civil procedure.

34-112.03. Division fence; changes made by Laws 2007, LB 108; applicability. The changes made to sections 34-102, 34-112, and 37-1012 by Laws 2007, LB 108, sections 34-112.01 and 34-112.02, and the repeal of sections 34-101, 34-103 to 34-111, and 34-113 by Laws 2007, LB 108, apply commencing on March 8, 2007, except that prior law applies to any division fence dispute commenced prior to such date.