



## Fences in Agricultural Areas

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Wisconsin's fence law, codified in ch. 90, Stats., generally requires adjoining landowners to share the responsibility for maintaining a fence between their properties when **either** owner uses land for farming or grazing. This issue brief summarizes the law's history, basic requirements, enforcement, and effect on landowner liability.

### HISTORY

Portions of ch. 90, Stats., were among the first statutes adopted by the newly constituted Wisconsin Legislature in 1849, and the basic requirements remain the same. The fence law was based on legislation previously adopted by the territorial legislature. At the time, the law simplified relations among settlers by making the construction and maintenance of fences a shared responsibility of all rural residents and by reducing the potential claims for damages caused by animals. More recently, some commentators have argued that fence laws should be revised to reflect modern land use trends, including the increasing number of rural residents who do not keep livestock or engage in other traditional farming.<sup>1</sup>

### LEGAL REQUIREMENTS

The fence law establishes a general approach to allocating responsibility for maintaining a fence, but it allows neighboring landowners to negotiate alternative approaches. The fence law applies when either of two adjoining landowners uses their land for farming or grazing. It no longer applies if both neighbors stop using land for those purposes. [ss. 90.03 and 90.05 (1) (c), Stats.]

#### General Rule: Equal Responsibility

The fence law generally requires adjoining landowners to maintain a fence between the two properties "in equal shares." [s. 90.03, Stats.] When establishing a fence line, the law gives a rule of thumb that each owner is responsible for the half of the fence viewed to the right as an owner faces the neighboring property. [s. 90.07 (3), Stats.]

#### Alternative Partition Agreements

However, as mentioned, landowners may agree to an alternative approach, including using markers instead of a fence, allocating responsibility for maintaining a fence differently than the fence law prescribes, or even having no markers or fence. If adjoining landowners negotiate an agreement, called a "partition agreement," that is in writing and signed by witnesses, the agreement obligates the owners and their successors to build and maintain the fence in accordance with the agreement, unless a different agreement is reached or the fence law no longer applies. [s. 90.05, Stats.] In contrast, oral partition agreements do not create a legal obligation.

#### Materials and Dimensions

When the fence law applies, it specifies that a fence generally must be at least 50 inches high and not more than four inches from the ground. The law also specifies particular widths and combinations of strong woven, barbed, and tensile wire that constitute a "sufficient and legal" fence. However, the law allows for fences made of rails, boards, wires, walls, brooks, rivers, ponds, creeks, ditches, or hedges, if fence viewers judge them to be equivalent to fences that meet the law's general specifications. [s. 90.02, Stats.]

## ENFORCEMENT

Because adjoining landowners may agree to alternative approaches, the fence law is typically enforced only when a dispute arises between neighbors. In such disputes, the fence law is enforced by “fence viewers,” who are town supervisors, city alderpersons, or village trustees. [s. 90.01, Stats.]

A landowner may submit a complaint to two or more fence viewers in the relevant municipality<sup>2</sup> (or municipalities, if the properties cross a municipal boundary line), alleging that a neighbor has failed to repair or rebuild a fence as legally required. The fence viewers then must examine the fence. [ss. 90.07 (2) and 90.10, Stats.]

If the fence viewers determine that the fence is insufficient, they must inform the “delinquent” landowner of the insufficiency and direct that landowner to repair or rebuild the fence within a reasonable timeframe. If the fence is not repaired or rebuilt within that timeframe, the landowner who submitted the complaint may repair or rebuild the fence and recover the expense. The fence viewers must designate the amount to be recovered in a certificate, together with specified interest and fees. The certificate may be filed in the municipality, and the amount may then be collected through the property tax rolls. [ss. 90.10 and 90.11, Stats.]

The recovery of expenses under the fence law provides the exclusive remedy for resolving disputes regarding fences to which it applies. However, fence viewers’ determinations are subject to judicial review. [*Tomaszewski v. Giera*, 2003 WI App 65.]

## EFFECT ON LIABILITY

One historical purpose of the fence law was to reduce claims for damages caused by animals. To that end, the fence law specifies that, if a landowner does not maintain the landowner’s portion of a legal fence, the landowner may not recover any damages for trespasses by a neighboring landowner’s animals.

However, constructing a legal fence does not relieve a landowner of liability for damage caused by certain types of animals in the enclosed premises of a neighbor. Specifically, a landowner who complies with the fence law may nevertheless be held liable for damage caused by the landowner’s swine, horses, sheep, or goats in the enclosed premises of an adjoining owner. Likewise, compliance with the fence law does not relieve a landowner of liability for damage caused by a stallion over one year old, billy goat over four months old, bull over six months old, boar, or ram on a neighbor’s enclosed premises. [ss. 90.04 and 172.01, Stats.]

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<sup>1</sup> See, e.g., Terence J. Centner, *Reforming Outdated Fence Law Provisions: Good Fences Make Good Neighbors Only if They are Fair*, 12 J. Envtl. L. & Litig. 267 (1997).

<sup>2</sup> Although some relevant provisions of the fence law refer only to towns, the Wisconsin Supreme Court has interpreted the fence law, including fence viewer requirements, to apply in other municipalities. [*White v. Watertown*, 2019 WI 9.]