CHAPTER 359A

FENCES

Referred to in §169C.1, 169C.4, 169C.6, 359.17

This chapter not enacted as a part of this title; transferred from chapter 113 in Code 1993

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359A.1 Definitions.

As used in this chapter, unless the context otherwise requires, *"book"*, *"list"*, *"record"*, or *"schedule"* kept by a county auditor, assessor, treasurer, recorder, sheriff, or other county officer means the county system as defined in section 445.1.

2000 Acts, ch 1148, §1

359A.1A Partition fences.

The respective owners of adjoining tracts of land shall upon written request of either owner be compelled to erect and maintain partition fences, or contribute thereto, and keep the same in good repair throughout the year.

[C51, §895, 900, 901; R60, §1526, 1531, 1532; C73, §1489, 1494, 1495; C97, §2355; C24, 27, 31, 35, 39, §**1829;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.1]

C93, §359A.1

C2001, §359A.1A

359A.2 Trimming and cutting back.

If said fence be hedge, the owner thereof shall trim or cut it back twice during each calendar year, the first time during the month of June and the last time during the month of September, to within five feet from the ground, unless such owners otherwise agree in writing to be filed with and recorded by the township clerk.

[C51, §900; R60, §1531; C73, §1494; C97, §2355; C24, 27, 31, 35, 39, §**1830;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.2]

C93, §359A.2

359A.2A Fence viewers — township trustees — authority — conflict of interest.

1. The trustees of the township where a controversy arises under this chapter shall serve as fence viewers. The fence viewers shall have authority to hear and decide all questions related to matters that are part of the controversy as provided in this chapter.

2. *a.* A fence viewer who may have a conflict of interest in deciding a question related to a matter that is part of the controversy must disclose the possible conflict of interest to the parties and the other fence viewers prior to the fence viewers participating in the matter by conducting a hearing or making a decision under section 359A.4.

b. A fence viewer who has a conflict of interest in deciding a question related to a matter that is part of the controversy is disqualified from participating in the matter. The disqualification shall be made by the election of the fence viewer or unanimous vote of the

fence viewers who do not have a conflict of interest in the matter. However, if three or more fence viewers do not have a conflict of interest in the matter, the disqualification shall be made by a majority vote of those fence viewers.

3. A conflict of interest exists when a fence viewer is presented with a question to determine any matter affecting a tract of land in which the fence viewer or a person related to the fence viewer has an ownership or leasehold interest in that tract of land. That person is related to the fence viewer by being any of the following:

a. An immediate family member who is limited to any of the following:

(1) A spouse.

(2) A child, stepchild, grandchild, parent, stepparent, grandparent, sibling, stepsibling, half sibling, aunt, uncle, niece, or nephew.

(3) The spouse of any individual described in subparagraph (2).

b. A business associate who is limited to a person holding an interest in the same business entity as the fence viewer, so long as the person and the fence viewer each have a twenty-five percent or greater interest in that business entity. As used in this paragraph, *"business entity"* means a person organized or formed under Iowa statute or a foreign statute, and is authorized under Iowa statute to transact business in this state, either on a profit or nonprofit basis.

4. Upon the disqualification of the fence viewer, the remaining trustees shall appoint a qualified substitute fence viewer to decide each question related to a matter in controversy. If a trustee is not remaining, the township clerk shall appoint three qualified substitute fence viewers to decide each question related to a matter in controversy. However, this subsection does not apply if the township clerk selects a fence viewer as provided in section 359A.14.

5. Notwithstanding other provisions in the section to the contrary, a fence viewer who may or does have a conflict of interest in a matter that is part of the controversy may participate in the matter, including by hearing and deciding all questions related to the matter, if each party to the controversy signs a waiver. The waiver shall state that the party has been notified of the fence viewer's conflict of interest and agrees to the fence viewer's participation in the matter. The waiver shall be attached to the order issued pursuant to section 359A.4.

2018 Acts, ch 1081, §2
Referred to in §359A.3, 359A.4

359A.3 Notice and hearing.

The fence viewers shall give five days' notice in writing to all parties to the controversy. The notice shall prescribe the time and place of the hearing to decide any and all matters that are part of the controversy as described in the notice. Upon request of any landowner, the fence viewers shall give the notice to all adjoining landowners liable for the erection, maintenance, rebuilding, trimming, or cutting back, or repairing of a partition fence, or to pay for an existing hedge or fence. The notice must include the names of the fence viewers and state whether a fence viewer disclosed a possible conflict of interest or whether a substitute fence viewer was appointed due to a fence viewer's disqualification pursuant to section 359A.2A.

[C51, §896, 898, 902, 909; R60, §1527, 1529, 1533, 1540; C73, §1490, 1492, 1496, 1503; C97, §2356; C24, 27, 31, 35, 39, §**1831;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.3]

C93, §359A.3

2018 Acts, ch 1081, §3
Referred to in §359A.4, 359A.5

359A.4 Hearing — decision — order — deposit.

1. At the time and place described in section 359A.3, the fence viewers shall meet to hear and decide any and all matters that are part of the controversy. The fence viewers shall issue a written order that specifies the obligations, rights, and duties of the respective parties.

2. *a.* If the fence viewers determine the erection of a fence may be unfeasible in any location which constitutes the adjoining parties' property boundary, the fence viewers shall conduct a site evaluation. The fence viewers may request assistance by the county engineer in the county where the adjoining properties' boundary is situated. The determination may be based on any of the following:

(1) Topography.

(2) Terrain.
(3) Terraces.
(4) Land slope.
(5) Unstable ground.
(6) The presence of surface water, drainage systems, sinkholes, or water wells.
(7) Easements.
(8) Utilities.
(9) Available area.

b. If the fence viewers determine the erection of a fence is unfeasible as provided in the site evaluation, the fence viewers shall assist the parties in reaching an agreement as provided in sections 359A.12 and 359A.13. However, if the parties cannot reach such agreement within sixty days after the site evaluation is completed, the fence viewers shall order the fence's erection. The fence shall be erected as otherwise provided in this section, except for any location identified as unfeasible in the site evaluation. For that location, the fence viewers shall order the fence to be erected at the most feasible location on the property of the owner who initiated the controversy that is closest to the adjoining owner's property boundary.

3. *a.* The order shall assign to each owner the part which the owner shall erect, maintain, rebuild, trim or cut back, or pay for, and fix the value thereof, and prescribe the time within which the same shall be completed or paid for, and, in case of repair, may specify the kind of repairs to be made.

b. If the fence is not erected, rebuilt, or repaired within the time prescribed in the order, the fence viewers shall require the complaining landowner to deposit with the fence viewers an amount of money sufficient to pay for the erecting, rebuilding, trimming, cutting back or repairing such fence together with the fees of the fence viewers and costs. Such complaining landowner shall be reimbursed as soon as the costs and fees assessed against the party in default are collected as provided in section 359A.6.

4. The order shall include the names of the fence viewers. The order shall state whether a fence viewer disclosed a possible conflict of interest, and whether a substitute fence viewer was appointed due to a disqualification pursuant to section 359A.2A. Any waiver of a conflict of interest signed by a party shall be attached to the order.

[C51, §896, 898, 902, 909; R60, §1527, 1529, 1533, 1540; C73, §1490, 1492, 1496, 1503; C97, §2356; C24, 27, 31, 35, 39, §**1832;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.4]
C93, §359A.4
2010 Acts, ch 1118, §6; 2018 Acts, ch 1081, §4
Referred to in §359A.2A, 359A.5

359A.5 Contribution postponed.

In case a landowner desires to erect a partition hedge or fence when the owner of the adjoining land is not liable to contribute thereto, the fence viewers may assign to each owner the part which the owner shall erect, maintain, rebuild, and repair, trim or cut back, by pursuing the method provided in sections 359A.3 and 359A.4; but the adjoining owner shall not be required to contribute thereto until the adjoining owner becomes liable so to do, as elsewhere in this chapter provided.

[C51, §901; R60, §1532; C73, §1495; C97, §2357; C24, 27, 31, 35, 39, §**1833;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.5]
C93, §359A.5

359A.6 Default — costs and fees collected.

If the erecting, rebuilding, or repairing of a fence is not completed within thirty days from and after the time fixed in the order, the board of township trustees acting as fence viewers shall cause the fence to be erected, rebuilt, and repaired, and the value thereof may be fixed by the fence viewers. Unless the sum so fixed, together with all fees of the fence viewers caused by the default, is paid to the county treasurer, within ten days after the full amount due is ascertained, or when ordered to pay for an existing fence, and the value thereof is fixed by the fence viewers, and the sum, together with the fees of the fence viewers, remains unpaid by the party in default for ten days, the fence viewers shall certify to the county treasurer the

full amount due from the party or parties in default, including all fees and costs assessed by the fence viewers, together with a description of the real estate owned by the party or parties in default along or upon which the said fence exists. The county treasurer shall enter the full amount due upon the county system, and the amount shall be collected in the same manner as ordinary taxes. Upon certification to the county treasurer, the amount assessed shall be a lien on the parcel until paid.

[C51, §897, 899, 902; R60, §1528, 1530, 1533; C73, §1491, 1493, 1496; C97, §2358; S13, §2358; C24, 27, 31, 35, 39, §**1834;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.6]

C93, §359A.6

2010 Acts, ch 1118, §7; 2015 Acts, ch 30, §110

Referred to in §169C.6, 359A.4, 445.1

Collection of taxes, chapter 445 et seq.

Fees of fence viewers, §359.46

359A.7 Service of notice on nonresidents.

The notice by the fence viewers provided for in this chapter may be served upon any owner nonresident of the county where the land is situated, by publication thereof, once each week, for two consecutive weeks in a newspaper printed in the county in which the land is situated, proof of which shall be made as in case of an original notice and filed with the fence viewers, and a copy delivered to the occupant of said land, or to any agent of the owner in charge of the same.

[C97, §2359; S13, §2359; C24, 27, 31, 35, 39, §**1835;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.7]

C93, §359A.7

Proof of publication, **R.C.P. 1.314**

359A.8 Orders.

All orders and decisions made by the fence viewers shall be in writing, signed by at least two of them, and filed with the township clerk.

[C97, §2360; C24, 27, 31, 35, 39, §**1836;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.8]

C93, §359A.8

359A.9 Notice.

All notices in this chapter required to be given shall be in writing, and return of service thereof made in the same manner as notices in actions before a judicial magistrate.

[C97, §2360; C24, 27, 31, 35, 39, §**1837;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.9]

C93, §359A.9

Service and return, **R.C.P. 1.302 – 1.315**

359A.10 Entry and record of orders.

Such orders, decisions, notices, and returns shall be entered of record at length by the township clerk, and a copy thereof certified by the township clerk to the county recorder, who shall record the same in the recorder's office in the manner specified in sections 558.49 and 558.52, and index such record in the name of each adjoining owner as grantor to the other. The county recorder shall collect fees specified in section 331.604.

[C97, §2360; C24, 27, 31, 35, 39, §**1838;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.10]

C93, §359A.10

2009 Acts, ch 27, §12; 2014 Acts, ch 1141, §70

Referred to in §331.602

359A.11 Record conclusive.

The record in the recorder's office, unless modified, by appeal as hereinafter provided, shall be conclusive evidence of the matters therein stated, and such record or a certified copy thereof shall be competent evidence in all courts.

[C97, §2360; C24, 27, 31, 35, 39, §**1839;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.11]

C93, §359A.11

Appeal, §359A.23

359A.12 Division by agreement — record.

The several owners may, in writing, agree upon the portion of partition fences between their lands which shall be erected and maintained by each, which writing shall describe the lands and the parts of the fences so assigned, be signed and acknowledged by them, and filed and recorded in the office of the recorder of deeds of the county or counties in which they are situated. The county recorder shall collect fees specified in section 331.604.

[C51, §905; R60, §1536; C73, §1499; C97, §2361; C24, 27, 31, 35, 39, §**1840;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.12]

C93, §359A.12

2009 Acts, ch 27, §13

Referred to in §359A.4

359A.13 Orders and agreements — effect.

Any order made by the fence viewers, or any agreement in writing between adjoining landowners, when recorded in the office of the recorder of deeds, as in this chapter provided, shall bind the makers, their heirs, and subsequent grantees.

[C51, §905; R60, §1536; C73, §1499; C97, §2362; C24, 27, 31, 35, 39, §**1841;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.13]

C93, §359A.13

Referred to in §359A.4

359A.14 Lands in different townships.

When the adjoining lands are situated in different townships in the same or different counties, the clerk of the township of the owner making the application shall select two trustees of the clerk's township as fence viewers, and the clerk of the other township one from that clerk's township, who shall possess, in such case, all the powers given to fence viewers in this chapter, but all orders, notices, and valuations and taxation of costs made by them must be recorded in both townships and in the office of the recorder of deeds of each county.

[C51, §906; R60, §1537; C73, §1500; C97, §2363; C24, 27, 31, 35, 39, §**1842;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.14]

C93, §359A.14

Referred to in §359A.2A

359A.15 Fence on another's land.

When a person has made a fence or other improvement on an enclosure, which is found to be on land of another, such person may enter upon the land of the other and remove the fence or other improvement and material, upon the first paying, or offering to pay, the other party for any damage to the soil which may be occasioned thereby, and the value of any timber used in said improvement taken from the land of such other party, if any; and if the parties cannot agree as to the damages, the fence viewers may determine them as in other cases; such removal shall be made as soon as practicable, but not so as to expose the crops of the other party.

[C51, §907, 908; R60, §1538, 1539; C73, §1501, 1502; C97, §2364; C24, 27, 31, 35, 39, §**1843;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.15]

C93, §359A.15

359A.16 Right to build fence on line.

A person building a fence may lay the same upon the line between the person and the adjacent owners, so that it may be partly on one side and partly on the other, and the owner shall have the same right to remove it as if it were wholly on the owner's own land.

[C51, §910; R60, §1541; C73, §1504; C97, §2365; C24, 27, 31, 35, 39, §**1844;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.16]

C93, §359A.16

359A.17 Fence on one side of line.

The provisions concerning partition fences shall apply to a fence standing wholly upon one side of the division line.

[C51, §911; R60, §1542; C73, §1505; C97, §2366; C24, 27, 31, 35, 39, §**1845;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.17]

C93, §359A.17

359A.18 Lawful fence.

A lawful fence shall consist of:

1. Three rails of good substantial material fastened in or to good substantial posts not more than ten feet apart.
2. Three boards not less than six inches wide and three-quarters of an inch thick, fastened in or to good substantial posts not more than eight feet apart.
3. Three wires, barbed with not less than thirty-six iron barbs of two points each, or twenty-six iron barbs of four points each, on each rod of wire, or of four wires, two thus barbed and two smooth, the wires to be firmly fastened to posts not more than two rods apart, with not less than two stays between posts, or with posts not more than one rod apart without such stays, the top wire to be not more than fifty-four nor less than forty-eight inches in height.
4. Wire either wholly or in part, substantially built and kept in good repair, the lowest or bottom rail, wire, or board not more than twenty nor less than sixteen inches from the ground, the top rail, wire, or board to be between forty-eight and fifty-four inches in height and the middle rail, wire, or board not less than twelve nor more than eighteen inches above the bottom rail, wire, or board.
5. A fence consisting of four parallel, coated steel, smooth high-tensile wire which meets requirements adopted by ASTM (American society for testing and materials) international, including but not limited to requirements relating to the grade, tensile strength, elongation, dimensions, and tolerances of the wire. The wire must be firmly fastened to plastic, metal, or wooden posts securely planted in the earth. The posts shall not be more than two rods apart. The top wire shall be at least forty inches in height.
6. Any other kind of fence which the fence viewers consider to be equivalent to a lawful fence or which meets standards established by the department of agriculture and land stewardship by rule as equivalent to a lawful fence.

[R60, §1544, 1545; C73, §1507; C97, §2367; S13, §2367; C24, 27, 31, 35, 39, §**1846;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.18]

85 Acts, ch 195, §11; 87 Acts, ch 17, §5

C93, §359A.18

94 Acts, ch 1061, §1; 2000 Acts, ch 1058, §33; 2004 Acts, ch 1086, §106

Referred to in §359A.22
School attendance centers, §297.14
Railway fence specifications, §327G.4 and 327G.5

359A.19 Duty to maintain tight fences.

All partition fences may be made tight by the party desiring it, and when that party's portion is so completed, and securely fastened to good substantial posts, set firmly in the ground, not more than twenty feet apart, the adjoining property owner shall construct the adjoining owner's portion of the adjoining fence, in a lawful tight manner, same to be securely fastened to good substantial posts, set firmly in the ground, not more than twenty feet apart.

[R60, §1545; C73, §1507; C97, §2367; S13, §2367; C24, 27, 31, 35, 39, §**1847;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.19]

C93, §359A.19

Referred to in §359A.22

359A.20 Tight fence.

All tight partition fences shall consist of:

1. Not less than twenty-six inches of substantial woven wire on the bottom, with three

strands of barbed wire with not less than thirty-six barbs of at least two points to the rod, on top, the top wire to be not less than forty-eight inches, nor more than fifty-four inches high.

2. Good substantial woven wire not less than forty-eight inches nor more than fifty-four inches high with one barbed wire of not less than thirty-six barbs of two points to the rod, not more than four inches above said woven wire.

3. Any other kind of fence which the fence viewers consider to be equivalent to a tight partition fence or which meets standards established by the department of agriculture and land stewardship by rule as equivalent to a tight partition fence.

[C97, §2367; S13, §2367; C24, 27, 31, 35, 39, §**1848;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.20]

85 Acts, ch 195, §12; 87 Acts, ch 17, §6

C93, §359A.20

Referred to in §359A.22

359A.21 Duty to keep fence tight.

In case adjoining owners or occupants of land shall use the same for pasturing sheep or swine, each shall keep that one's share of the partition fence in such condition as shall restrain such sheep or swine.

[C73, §1507; C97, §2367; S13, §2367; C24, 27, 31, 35, 39, §**1849;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.21]

C93, §359A.21

Referred to in §359A.22

359A.22 Controversies.

Upon the application of either owner, after notice is given as prescribed in this chapter, the fence viewers shall determine all controversies arising under sections 359A.18 to 359A.21, inclusive, including the partition fences made sheep and swine tight.

[C97, §2367; S13, §2367; C24, 27, 31, 35, 39, §**1850;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.22]

C93, §359A.22

Notice, §359A.3, 359A.7, 359A.9

359A.22A Habitual trespass.

A landowner of land where livestock are kept or an owner of adjoining land shall be liable to erect or maintain a fence if the livestock trespasses upon the land of a neighboring landowner or strays from the land where the livestock are kept onto a public road, as provided in section 169C.6.

2007 Acts, ch 64, §3

359A.23 Appeal.

Any person affected by an order or decision of the fence viewers may appeal to the district court by filing with the clerk of said court a notice of appeal within twenty days after the rendition of the order or decision appealed from and filing an appeal bond in an amount approved by the township clerk. The township clerk, after recording the original papers, shall thereupon file them in the office of the clerk of the district court, certifying them to be such, and the clerk shall docket them, entitling the applicant or petitioner as plaintiff, and it shall stand for trial as other cases.

[C97, §2369; C24, 27, 31, 35, 39, §**1851;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.23]

C93, §359A.23

Referred to in **§602.8102(27)**

Presumption of approval of bond, §636.10

359A.24 Certification of decree.

Upon the final determination of said appeal the clerk of the district court shall certify to the recorder of deeds the fact that a judgment has been entered upon such appeal, with the book and page of such judgment, and the recorder shall thereupon enter on the recorder's record

a notation that a judgment on appeal has been entered and that the same may be found in the office of the clerk of the district court, in the book and page designated in said certificate.

[C24, 27, 31, 35, 39, §**1852;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.24]
C93, §359A.24
Referred to in §331.602, 602.8102(28)

359A.25 Record kept — fees of clerk.

The township clerk shall enter all matters herein required to be made of record in the clerk's record book, and shall receive ten cents for each one hundred words in entering of record and making certified copies of the matters herein provided for, and twenty-five cents additional for the clerk's certificate thereto when required, and shall also receive the costs of recording in the office of the recorder of deeds of any instrument required to be so recorded.

[C97, §2370; C24, 27, 31, 35, 39, §**1853;** C46, 50, 54, 58, 62, 66, 71, 73, 75, 77, 79, 81, §113.25]
C93, §359A.25