Chapter 96

(1971 reprint)

Line and Partition Fences

96.010 Sharing expenses of partition fence
96.020 Failure to repair partition fence
96.030 Repairs by complainant
96.040 Removal of partition fence
96.050 Gate in partition fence
96.060 Removal of fence built on another's land
96.070 Running of division line as notice to remove fence built on another's land

CROSS REFERENCES

Animals, damage by or to, fences to prevent, Ch. 608

96.010 Sharing expenses of partition fence. Whenever there is a fence that is in all respects such as a good husbandman ought to keep on the line of any land, and the person owning or holding a lease for one or more years of the land adjoining thereto makes or has an inclosure on the opposite side of such fence, so that such fence answers the purpose of inclosing the latter's field, meadow, lot or other inclosure, the latter shall pay the owner of such fence already erected, one-half of the value of so much thereof as serves as a partition fence, such value to be determined by the parties. If they cannot agree, the party aggrieved and entitled to compensation for constructing or repairing the partition fence shall be entitled to recover from the other in a civil action the value of one-half of such fence or half of the value of repairing it before any court having competent jurisdiction in the name of and for the use of the owner or lessee of such fence, together with his disbursements and costs of action. The prevailing party shall also recover his attorney's fees, to be adjudged by the court.

96.020 Failure to repair partition fence. If any party neglects to repair or rebuild such partition fence as is mentioned in ORS 96.010 or the portion thereof which he ought to maintain, the aggrieved party may complain to a justice of the peace, who, after due notice to each party, shall examine the fence and if he determines it to be insufficient he shall so signify in writing to the delinquent party and direct the latter to repair or rebuild it within such time as he adjudges to be reasonable.

96.030 Repairs by complainant. If a partition fence is not repaired or rebuilt according to the directive mentioned in ORS 96.020, the complainant may repair or rebuild it and recover the value thereof from the delinquent party before any court of competent jurisdiction, together with his costs and disbursements and reasonable attorney's fees, to be adjudged by the court.

96.040 Removal of partition fence. (1) In all cases where the inclosures of two or more persons are divided by a partition fence of any kind and either of the parties thinks it proper to vacate his part of the inclosure or to make a lane or passage between the adjoining inclosures, he is at liberty to remove his share or part of the partition fence on giving six months' notice in writing of such intention to the party owning or occupying the adjoining inclosure, or to his agent, if such party is not a resident of the county.

(2) When one party ceases to improve his land or opens his inclosure, he shall not take away any part of the partition fence belonging to him and adjoining the next inclosure if the owner or occupant of the adjoining inclosure, within two months after it is ascertained, pays therefor such sum as is agreed upon by the parties or, if they fail to agree, such sum as is adjudged by two disinterested persons, selected by the parties, which two persons, if they fail to agree, may select a third person, and the three persons shall determine such sum. Such partition fence shall not be removed when by so doing it will expose to destruction any crops in such inclosures.

96.050 Gate in partition fence. In all cases where a partition fence exists between the land of two or more persons and a gate is established for passage through their lands, any other person may pass through the gate free, doing no unnecessary damage, and if any such person leaves any such gate open or does other damage to the premises, he is liable to the aggrieved party in double damages.

96.060 Removal of fence built on another's land. (1) When any person has built or builds, by mistake and in good faith, a fence on the land of another, such person or his successor in interest may, within one year from the time of discovering the mistake, go upon the land of the other person and remove the fence, doing no unnecessary damage thereby.

(2) The occupant or owner of land whereon a fence has been built by mistake shall not throw down or in any manner disturb such fence during the period which the person who built it is authorized by subsection (1) of this section to remove it.

96.070 Running of division line as notice to remove fence built on another's land. The person building the fence mentioned in ORS 96.060, or the occupant or owner of the land whereon it is built, may, upon notice to the other party, whenever doubts arise about its location, require the surveyor of the county to run the division line between their respective lands; and the line so run shall be sufficient notice to the party making the mistake so as to require him to remove such fence within one year thereafter.