

OHIO PARTITION FENCE LAW

A PROCEDURAL GUIDE FOR TOWNSHIPS

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The Ohio General Assembly revised Chapter 971 of the Ohio Revised Code, the Ohio Partition Fence Law, on June 10, 2008. The new law is effective on September 30, 2008. This guide offers an explanation of the new law and the procedures boards of township trustees must follow when implementing the new law.

OVERVIEW OF THE NEW PARTITION FENCE LAW

Ohio's new partition fence law contains three different rules for determining responsibility for the construction and maintenance of a partition fence. The new law's rule of "equitable shares" allows for the assignment of proportionate obligations for a partition fence after a consideration of factors regarding the fence, its purpose and its location. This rule will apply to existing, preexisting and removed fences, which the law defines. For new and improperly removed fences, the individual proposing the fence will be solely responsible for its construction and maintenance. The old law's rule of "equal shares" still exists, but applies only to certain governmental fences. In many cases, owners must follow specific procedures in order to establish a fence so that it will fall under the rule of equitable apportionment rather than the rule of individual responsibility.

Aggrieved owners will have two options for resolving a partition fence dispute—either filing a complaint with the board of trustees or filing an action in the court of common pleas. Owners who choose the township trustee complaint option may pursue binding arbitration if dissatisfied with the board's assignment. Trustees maintain the authority to order the construction or maintenance of a partition fence and the clearing of a fence row, and may assess costs for such against the properties. The new law grants a right of access on adjoining property for building and maintaining a fence, contains penalties for obstruction of lawful construction or maintenance and requires an owner to notify the adjoining owner prior to removal of a partition fence.

The law also provides a reimbursement procedure if a new fence built under the rule of individual responsibility is later used to contain livestock by an adjoining owner who did not contribute to the cost or maintenance of the fence. The law establishes standards for "preferred" partition fences that contain livestock, and requires livestock owners to use preferred partition fences. As in the old law, adjoining landowners may agree in writing to vary from the provisions of the partition fence law.

DETERMINING IF A FENCE IS A “PARTITION FENCE” FOR PURPOSES OF CHAPTER 971

The provisions of Chapter 971 of the Ohio Revised Code apply only to “partition fences.” A fence must fit the definition of a partition fence in order for the board of township trustees to exercise jurisdiction over the fence. The law defines a partition fence in R.C. 971.01(E) as:

1. A fence that is located on the division line between the adjoining properties of two owners.
2. A fence that has been considered a division line between two adjoining properties even though a subsequent land survey indicates that the fence is not located directly on the division line.
 - a. This provision is new and could create a situation where the board of township trustees must determine if the fence has been “considered” a partition fence. The law does not provide guidance on making the determination. Historical evidence that adjoining owners recognized the partition fence as the property line could include testimony, property records, shared responsibility for the fence, use of the properties and photographs.

Fences that are not “partition fences.” There are three fencing situations that are not subject to the partition fence law. R.C. 971.03 states that the law does not apply to the following:

1. The enclosure of lots in municipal corporations.
2. The enclosure of adjoining properties that are laid out into lots outside of municipal corporations.
 - a. Like the old law, the new law does not define “laid out into lots.” The Ohio Supreme Court has addressed this issue and provides guidance by stating that “land cannot be “laid out into lots” *unless and until* it has been surveyed, platted, and approved by the board of county commissioners or a planning commission in conformity with [Ohio’s subdivision statutes, R.C. 711.001 et seq].” See *Glass v. Dryden*, 18 Ohio St. 2d 149 (1969).
3. Fences required to be constructed by persons or corporations owning, controlling, or managing a railroad pursuant to Chapter 4959 of the Revised Code.

Exception by agreement of the owners. R.C. 971.04 allows owners to exempt themselves from the partition fence law. Adjoining owners may agree that no partition fence is needed or that the provisions of Chapter 971 do not apply to their partition fence. This type of agreement is binding on future owners and removes the fence from the jurisdiction of the board of township trustees. The agreement must meet the following requirements stated in R.C. 971.04 and R.C. 971.15:

1. The agreement must be in writing.
2. A description of the land where the fence is located must be contained in the agreement.
3. The agreement must include a description of the purpose and use of the fence.
4. The owners must file the agreement in the county recorder’s partition fence record.

DUTY TO ENCLOSE LIVESTOCK WITH A PREFERRED PARTITION FENCE

The law states in R.C. 971.02 that all fields and enclosures containing livestock that are bordered by a property division line must be enclosed by a “preferred” partition fence. An owner of livestock who permits the livestock to run at large out of the livestock’s enclosure is liable for all damages caused by the livestock on another’s premises, according to R.C. 971.18.

1. Two exceptions apply to the duty to use a preferred partition fence for enclosing livestock:
 - a. The requirement does not apply to fences constructed prior to September 30, 2008, the effective date of the new partition fence law.
 - b. The requirement does not apply where a written and recorded agreement between adjoining owners provides otherwise.

2. The law defines a “preferred” partition fence in R.C. 971.01(F) as any of the following:
 - a. A partition fence that is woven wire, either standard or high tensile, with one or two strands of barbed wire not less than 48 inches from the ground.
 - b. A nonelectric high tensile fence of at least seven strands constructed in accordance with the Natural Resources Conservation Services conservation practice standard for fences, code 382.
 - c. A barbed wire, electric or live fence if the owners of adjoining properties agree in writing to allow the fence.

RULES FOR DETERMINING RESPONSIBILITY FOR FENCE CONSTRUCTION OR MAINTENANCE

The partition fence law creates three different rules for determining responsibility for partition fences. Each rule applies to different types of partition fences. This section summarizes each rule, and the next section of the guide defines the different types of fences. For certain fences, adjoining landowners will share “equitably” in the costs of building and maintaining a fence, while other types of fences will be solely the responsibility of the owner who proposes the fence. The old law’s rule of “equal shares” remains in place for one type of fence. Because the rules of responsibility vary significantly, it is important that the board of township trustees understand the different rules and the circumstances for applying each rule.

1. Equitable shares rule. This rule states that owners must share “equitably” in the cost of building and maintaining the partition fence, including any necessary clearing of the land. This rule is a departure from the old law, which required “equal” apportionment between adjoining owners. The rule of equitable shares allows the board to proportion responsibilities based upon a consideration of factors regarding the fence, its purpose and location.

- a. Equitable shares factors. When making an assignment of equitable shares, the law mandates that the board of township trustees must consider, without limitation, all of the following factors listed in R.C. 971.09(E):
 - i. The topography of the property.
 - ii. The presence of streams, creeks, rivers or other bodies of water.
 - iii. The presences of trees, vines or other vegetation.
 - iv. The level of risk of trespassers on either property due to the population density surrounding the property or the recreational use of adjoining properties.
 - v. The importance of marking division lines between the properties.
 - vi. The number and type of livestock owned by either owner that may be contained by the partition fence.
 - b. Fences subject to the equitable shares rule. Unless the owners have made an agreement otherwise, the equitable shares rule applies to these types of fences, which are defined in the partition fence law and explained later in this guide:
 - i. Existing fences.
 - ii. Previously existing fences.
 - iii. Removed and rebuilt fences.
 - iv. Reimbursement claim fences.
2. Individual responsibility rule. This new provision of the partition fence law states that the landowner proposing the fence is fully responsible for the cost of building and maintaining the fence, including any necessary clearing of the land.
- a. Fences subject to the individual responsibility rule. The rule of individual responsibility applies to the following types of fences, unless the owners have made an agreement otherwise pursuant to R.C. 971.04:
 - i. New fences.
 - ii. Removed and rebuilt fences with no affidavit of removal or where proper notice of removal was not provided.
3. Equal shares rule. The new partition fence law provides only one situation where the cost of building and maintaining a partition fence is shared equally between the owners.
- a. Fences subject to the equal shares rule. According to R.C. 971.071 and R.C. 971.01(D)(2), certain governmental owners are responsible for 50% of the total cost of the partition fence if land they own, lease, manage or control is adjacent to land used to graze livestock. The following owners are subject to the equal shares rule:
 - i. The department of natural resources.
 - ii. A conservancy district organized under Chapter 6101.
 - iii. A political subdivision with a real property interest in “recreational trails,” as defined in R.C. 1519.07(3).

DETERMINING THE TYPE OF PARTITION FENCE

Because different rules apply to different types of fences, defining the type of partition fence is necessary to determining who is responsible for construction or maintenance of the partition fence. The law creates four types of fences that fall under the rule of equitable shares and two types of fences to which the rule of individual responsibility applies; only one type of fence is subject to the equal shares rule. In several cases, an owner must take steps to establish the type of partition fence. The following describes each type of fence and the procedures that may be necessary to establish each type of fence.

1. Previously existing fence. R.C. 971.05 and R.C. 971.07. The law applies the rule of equitable shares to previously existing fences. Legally, a previously existing fence is either of the following:
 - a. A preexisting fence established by an affidavit. R.C. 971.05(A). Owners have one year from the effective date of the new law to file an affidavit of previously existing fence, as follows:
 - i. One or both landowners may file an affidavit stating that a fence previously existed if:
 - a. There is evidence that a partition fence previously existed.
 - b. The fence existed within two years of the date of filing the affidavit.
 - c. The affidavit is filed with the county recorder by September 30, 2009.
 - ii. The affidavit must specify the location of the properties and state that the previous fence was removed and not replaced.
 - b. A preexisting fence established by evidence. R.C. 971.06(B).
 - i. The partition fence law will recognize a previous fence “if there is evidence that a partition fence previously existed between adjoining properties.”
 - i. Unlike provisions for establishing a preexisting fence by affidavit, there are no timing requirements or deadlines for establishing a preexisting fence by evidence.
 - ii. Where an owner has filed a partition fence complaint, the board of trustees has the duty to determine whether a fence previously existed, if applicable, pursuant to 971.09(B).
 - iii. The law does not provide guidance on the evidence that must be submitted to establish the previously existing fence, but trustees should ensure that a preponderance of the evidence supports a determination that a fence previously existed. Evidence could include photos, written references to the fence or records of the fence, existence of fence posts, wire and other fence parts, and testimony from an eye witness.
2. Removed and replaced fence. R.C. 971.06(C) and R.C. 971.17. Two different rules apply to removed and replaced fences. If a partition fence is properly removed and procedures properly followed, the rule of equitable shares applies to replacement of a removed fence. Where the fence is improperly removed or the owner does not follow

procedures to establish that the fence was removed, the rule of individual responsibility will apply to the replacement fence. Procedures for properly removing and establishing a removed fence are as follows:

- a. An owner must notify the adjoining owner at least 28 days prior to removing a partition fence. R.C. 971.17.
 - i. Notice may be made by personal service, ordinary mail, certified mail or publication in the county newspaper.
 - ii. If the owner does not provide proper notice of removal, the owner forfeits the right to make a reimbursement claim for construction or maintenance of a new partition fence in place of the removed fence.
 - b. An owner who removes a fence without replacing it within one year of removal must file an affidavit of partition fence removal pursuant to R.C. 971.06(C) as follows:
 - i. The affidavit must specify the location of the adjoining properties.
 - ii. The affidavit must state that a partition fence was removed from the properties within one year of filing the affidavit and was not replaced.
 - iii. The owner must file the affidavit with the county recorder within one year of removing the fence.
 - c. If an owner files an affidavit of partition fence removal, the rule of equitable shares will apply to a replacement fence. If there is no affidavit of removal, an owner will be individually responsible for building and maintaining a new replacement fence.
3. Existing fence. R.C. 971.06(A). The rule of equitable shares applies to an existing fence, and also applies if the owners decide to replace an existing fence.
- a. The law doesn't provide a date or timing requirement for the fence to be in existence. Township trustees could refer to the law's effective date of September 30, 2008 and consider an existing fence to be a fence that was in existence as of this date. The board must be careful to differentiate a "new" fence that was built according to the rule of individual responsibility from an "existing" fence that will fall under the rule of equitable shares. One tool that can assist the board in distinguishing a new fence from an existing fence is the affidavit of costs that an owner may file upon construction of a new fence, described in the section on "Reimbursement Procedure for Subsequent Use of a New Fence."
4. New fence. R.C. 971.07(A). A new fence will be subject to the rule of individual responsibility. A new fence results where:
- a. There is not an existing partition fence.
 - b. There is no evidence that a partition fence previously existed.
 - c. An affidavit has not been filed with the county recorder for either a previously existing or a removed fence.
 - d. A written agreement between the owners of adjoining properties concerning the fence has not been filed with the county recorder.

5. Reimbursement claim fence. R.C. 971.07(D). An owner who constructs a new fence may seek reimbursement for the costs of building and maintaining the fence from an adjoining owner who uses the fence to contain livestock within thirty years after the fence was constructed. Where a reimbursement claim is paid or required by court, the new fence subsequently is subject to the rule of equitable shares.
 - a. See “Reimbursement Procedure for Subsequent Use of a New Fence” later in this guide for an explanation of the reimbursement procedure.
 - b. The law does not establish a public record for paid reimbursement claims (except that reimbursements that are the result of a court order would be found in court records) and it may be difficult for the board of trustees to verify that a reimbursement claim has been paid or ordered on a fence. Because the rule of equitable shares rather than the rule of individual responsibility would apply to the fence, the board should seek evidence of the paid reimbursement claim before making any findings or assignments modifying responsibility for the fence.

PARTITION FENCE COMPLAINTS BEFORE THE BOARD OF TOWNSHIP TRUSTEES

Owners have two options for resolving a partition fence dispute. When another owner fails to build or maintain a partition fence as required by the law, the aggrieved owner may either file an action with the court of common pleas or file a complaint with the board of township trustees. The following outlines the law and procedures the board of township trustees should follow in regards to partition fence complaints. Note that these procedures differ in several ways from the old law.

1. Concurrent jurisdiction over partition fences. R.C. 971.09(A)(3).
 - a. If a partition fence is on a county or township line, each township may have jurisdiction over the partition fence and each owner may seek the jurisdiction of either township.
 - b. If the parties seek jurisdiction from both townships, the townships shall act jointly on the complaint but must maintain separate records in each township.
2. Notice to an owner intending to file a partition fence complaint. R.C. 971.09(A)(2).
 - a. The partition fence law requires the board of township trustees to provide an aggrieved owner who *intends* to file a partition fence complaint with a document containing the following:
 - i. Notification that the owner may file an action in the court of common pleas in lieu of filing a complaint with the township.
 - ii. A description of potential financial and maintenance responsibilities that may result from the partition fence complaint.

- b. The aggrieved owner must sign and date the document *prior to* filing a partition fence complaint with the board of township trustees.
 - i. The board of township trustees does not have jurisdiction over a partition fence complaint filed by an owner unless the owner signs, dates and returns the document.
 - c. See the appendix for a model document to use for this requirement, the “Notice of Rights and Responsibilities under Ohio Partition Fence Law.”
3. Fence viewing and review of records. R.C. 971.09(B) and (C).
- a. Requirement for a fence viewing. R.C. 971.09(B). When an owner files a partition fence complaint, the board of township trustees must view the fence or premises where the fence is located or proposed to be built.
 - i. The viewing may not take place until the board has properly served notice on adjoining owners, as follows.
 - b. Notice of fence viewing. R.C. 971.09(B). The law requires the township to provide notice of the fence viewing as follows:
 - i. The notice must include the date, time and location of the fence viewing.
 - ii. Notice must be completed at least ten days prior to the fence viewing.
 - 1. The board should follow its routine procedures for serving and perfecting notice.
 - iii. Notice must be given to all adjoining owners. The law’s definition of “owner” includes:
 - 1. The fee simple owner of land.
 - 2. A life estate holder.
 - 3. The owner of an easement.
 - 4. The owner of a right of way used as a farm outlet.
 - 5. The department of natural resources, a conservancy district organized under Chapter 6101 or a political subdivision with a property interest in recreational trails of land *if* the land owned, leased, managed or controlled by such is adjacent to land used for grazing livestock.
 - c. Board’s duty at the fence viewing. R.C. 971.09(B). The law requires the board of trustees to determine at the fence viewing:
 - i. Whether a partition fence exists,
 - ii. *Or* there is evidence that a partition fence previously existed.
 - iii. The law instructs the board to disregard the condition of the fence; a fence may “exist” regardless of whether it is in a state of disrepair.
 - d. Board’s duty to review records. R.C. 971.09(B). The law requires the board to review the records of the county recorder for any of the following documents:
 - i. An affidavit of preexisting fence filed pursuant to R.C. 971.05.
 - ii. An affidavit of a removed fence filed pursuant to R.C. 971.06.
 - iii. An affidavit of costs filed pursuant to R.C. 971.07.
 - iv. An agreement between owners filed pursuant to 971.04.

Note that the law states in R.C. 971.08(B) that a review of records should occur if there is no evidence that a partition fence exists or previously existed. However, the board of trustees should perform a review of the partition fence record for *every* complaint, even if there is evidence of an existing or preexisting fence, to ensure that the board obtains all available information about the partition fence or proposed partition fence.

- e. Board's authority to request information. R.C. 971.09(C). After the fence viewing and a review of records, the board of township trustees may request additional information from either owner that is a party to the partition fence complaint.
4. Board's decision on the partition fence complaint. R.C. 971.09(D).
- a. The law states that the board of township trustees shall make its decision on the complaint at the next regularly scheduled meeting of the board.
 - i. Although the partition fence law does not address notice requirements, the board of trustees should ensure that the parties to the partition fence complaint are properly served with notice of the meeting at which the board will make its decision on the complaint.
 - ii. For the portion of the board's meeting that regards the partition fence complaint, the board should follow its procedures for conducting a hearing and should allow the parties to the partition fence complaint to be represented by an attorney, present arguments, offer evidence and witnesses and cross examine witnesses. The board should maintain a record of the hearing, preferably using a court reporter. The board may assign the costs for the hearing equally to the parties to the complaint pursuant to R.C. 971.10.
 - b. Determination of requirement and assignment of responsibilities. R.C. 971.09(D). At the board's meeting when the complaint is heard, the board must determine whether a partition fence is required to be built or maintained, and if so, who is responsible for the construction or maintenance. For making the actual determination and assignment, refer to "Rules for Determining Responsibility for Fence Construction or Maintenance" in the previous section of this guide. The following summarizes the board's authority and the procedures the board should follow as it makes its determination.
 - i. The board may find that a fence is not required to be built or maintained. R.C. 971.09(D)(4).
 - ii. The board may find that construction or maintenance of the partition fence is required. If so, the board must determine how to allocate responsibility for constructing or maintaining the fence.
 - 1. The board may find that one owner is solely responsible and shall order the owner to pay the total costs. R.C. 971.09(D)(3).

2. The board may find that both owners are responsible. In this case, the board must make an equitable assignment of responsibilities, and must consider all of the factors for equitable assignment stated in R.C. 971.09(E), and described in a previous section of this guide, “Rules for Determining Responsibility for Fence Construction or Maintenance - equitable shares rule.”
 3. The board may assign owners a portion of the total cost if the fence will be constructed by a contractor, or may assign owners responsibility for a specific portion of the partition fence. R.C. 971.09(D)(2).
 4. If a partition fence will contain livestock, the board must include in its assignment the cost of building or modifying the fence to meet the standards for a “preferred” partition fence. R.C. 971.09(D)(2).
- c. Serving notice of the decision. R.C. 971.09(D). The board must notify each owner in writing of its decision, following routine procedures for serving notice.
 - d. Certifying and recording the board’s decision. R.C. 971.09(F). The law requires the board of township trustees to certify its decision to the county recorder, who must record the decision in the county’s partition fence record.
 - e. Assessing the township’s costs. R.C. 971.10 and R.C. 971.11.
 - i. The township shall tax the costs of handling the partition fence complaint equally against each owner.
 - ii. The board’s fiscal officer shall certify the costs along with a description of the lands to the county auditor if the owners fail to pay the costs within thirty days of the date of the board’s decision.
 - iii. The county auditor shall place the amounts upon the duplicate and pay the township fiscal officer when the amounts are collected.

ARBITRATION REQUESTS

A new section of the partition law allows an owner who is unhappy with the decision of the board of township trustees on a partition fence complaint to request binding arbitration rather than filing an appeal in common pleas court. The court of common pleas oversees the arbitration process, but the board of township trustees has several duties within the arbitration process. The following summarizes those parts of the arbitration request process in R.C. 971.09(G) that affect township trustees.

1. The owner must deliver the arbitration request to the board of township trustees, the adjoining owner and the court of common pleas within thirty days after the board makes its decision on a partition fence complaint.
2. Upon receiving an arbitration request, the board must submit a report of its decision on the partition fence complaint to the court of common pleas.
 - a. The law does not set a time requirement for the board’s filing of the report.

3. No later than thirty days after the court of common pleas appoints an arbitrator, the board must deliver to the arbitrator the board's recommendation for the assignment of responsibility to be made by the arbitrator.
4. The arbitrator shall make a decision within sixty days after appointment as arbitrator, and shall deliver the decision to the board and certify a report of the decision to the county recorder.
5. The arbitrator's decision replaces the decision of the board of township trustees and is binding upon the parties.
6. The owners may petition the court of common pleas for enforcement of the arbitration decision. This provision in R.C. 971.09(G)(3) places jurisdiction with the court of common pleas; the board of township trustees does not have jurisdiction to enforce an arbitration decision.

ENFORCEMENT OF A PARTITION FENCE ASSIGNMENT

Provisions for enforcement of a partition fence assignment made by the board of township trustees are substantially similar to the old partition fence law. An aggrieved owner may apply to the board of township trustees for enforcement if an adjoining owner fails to build or maintain its portion of the partition fence in good repair as assigned in the board's decision on a partition fence complaint. R.C. 917.12-14 provides that, upon an application for enforcement by an aggrieved owner, the board of township trustees must:

1. Advertise for bids once a week for three consecutive weeks in a newspaper of general circulation in the county.
2. Award a contract to the lowest responsible bidder who agrees to furnish labor and materials and build or maintain the fence according to the board's specifications.
3. Procure labor and materials at prevailing rates and cause the fence to be constructed or maintained, if no bids are received.
4. Certify the costs to the township fiscal officer, who must certify the costs to the county officer if not paid within thirty days. The board must certify the amount due each person for building or maintaining the fence and the amount due each trustee and fiscal officer for services. The county auditor shall place the amounts upon the tax duplicate and draw orders for payment of the amounts out of the county treasury.

ACCESS RIGHTS FOR BUILDING AND MAINTAINING A PARTITION FENCE

The partition fence law grants rights of access for the construction or maintenance of a partition fence. This provision of the law does not require involvement of the board of township trustees. R.C. 971.08 states that:

1. An owner who chooses to build a partition fence where the adjoining owner is not sharing in construction of the fence may enter on the adjoining property for no more than ten feet for the length of the fence for the purpose of building and maintaining the fence.
2. The owner will not be guilty of criminal trespass pursuant to R.C. 2911.21 or equivalent local ordinances.
3. The owner is liable for all damages caused to the adjoining property, including crop damages.
 - a. The adjoining owner would seek damages in court, not before the board of township trustees.

OBSTRUCTION OF PARTITION FENCE CONSTRUCTION OR MAINTENANCE

Two provisions of the partition fence law prohibit a person from obstructing partition fence construction or maintenance and provide for misdemeanor and felony charges as penalties for obstruction. The penalties become more severe where a person is threatened, harmed or seriously harmed. Causing serious harm or death can result in felony charges. The board of township trustees does not have jurisdiction over incidents of obstruction, which should be referred to the county sheriff and prosecutor. The provisions for obstruction are as follows:

1. R.C. 971.08 and R.C. 971.12 both state that no person may obstruct or interfere with anyone who is lawfully engaged in the construction or maintenance of a partition fence.
2. Under R.C. 971.12, no person may obstruct or interfere with the performance of any act related to the board of township trustee's authority to enforce the construction or maintenance of a partition fence upon the application of an aggrieved owner.

CLEARING THE FENCE ROW

As in the old partition fence law, the new law creates a duty upon an owner of land adjacent to a partition fence to clear brush, briars, thistles and other noxious weeds in a strip four feet wide along the line of the fence and in the fence corners, not including vines and trees for use. R.C. 971.33. The law provides a procedure in R.C. 971.34 to ensure the clearing of a fence row, as follows:

1. An adjoining owner may give notice upon another owner to cut or remove brush, briars, thistles and weeds in the fence row.

2. If the owner does not clear the fence row within ten days of receiving the notice, the adjoining owner may notify the board of township trustees of the failure to clear the fence row.
3. Upon receiving the notification, the board of township trustees must view the property and determine whether there is just cause for the complaint.
4. If the complaint is justified, the board shall cause the fence row to be cleared *either by* securing the lowest bidder or by entering into a contract for the work.
5. The old law's procedure for assessing the costs of clearing remains in place. R.C. 971.35 allows the township to certify the costs to the county auditor, who must place the amount on the tax duplicate and pay the amount to the township fiscal office when collected.

REMOVAL OF PARTITION FENCES

The partition fence law has several new provisions regarding removal of partition fences. The board of trustees does not have jurisdiction over disputes regarding removal of a fence, but should understand that a wrongful removal would affect responsibilities for a replacement fence in the future. R.C. 971.17 addresses removal of fences as follows:

1. An owner must provide an adjoining owner with notice at least 28 days prior to removing a partition fence.
 - a. An owner who removes a partition fence without providing notice may not later make a reimbursement claim against an adjoining owner for a fence that replaces the removed fence.
2. An adjoining owner who files a trespass action against an owner who removes a fence may include court costs, attorney fees and other litigation costs in the demand for relief.
3. An owner may not place debris from a partition fence removal on the adjoining owner's property without the written agreement of the adjoining owner.
 - a. The law provides the adjoining owner with a cause of action if there is no written agreement allowing placement of debris on the adjoining owner's property.
4. An owner who removes a fence and does not replace it within one year must file an affidavit of removal pursuant to 971.06(C)(1).
 - a. Filing the affidavit ensures that a replacement fence will fall under the rule of equitable shares. See the previous explanation in this guide on "removed and replaced fence" under "Determining the Type of Fence."

REIMBURSEMENT PROCEDURE FOR SUBSEQUENT USE OF A NEW FENCE

For new fences, the rule of individual responsibility in R.C. 971.07(A) requires that the landowner proposing the new fence shall bear the costs of building and maintaining the fence. However, the law provides a procedure for reimbursement if an adjoining landowner uses the fence for enclosing livestock within thirty years after the fence was built.

The reimbursement procedure does not require involvement by the board of township trustees. However, after reimbursement is made, there is a change in future obligations for the partition fence, as the fence will fall under the rule of equitable shares. Trustees then would have jurisdiction over future disputes regarding the fence. See “Determining the Type of Fence – reimbursement claim fences” earlier in this guide. The reimbursement procedure in R.C. 971.07 is as follows:

1. Filing of affidavit of costs. R.C. 971.07(A).
 - a. A landowner who builds a new partition fence may file an affidavit with the county recorder specifying the costs incurred in building the fence, and may also file an affidavit each year stating the costs expended that year for maintaining the fence.
 - i. Note that the law does not provide a deadline for filing the affidavit of costs.
 - ii. An owner who does not file an affidavit forfeits the right to seek reimbursement for the fence. R.C. 971.07(E).
2. Use of partition fence by adjoining landowner. R.C. 971.07(B)
 - a. The reimbursement procedure may only be used if these criteria exist:
 - i. An adjoining owner who did not assist in the costs of building and maintaining the fence, or a successor in interest to the adjoining owner when the fence was built, uses the partition fence for the purpose of containing livestock.
 - ii. The use of the fence takes place within thirty years after the fence was built.
 - iii. The owner or successive owner seeking reimbursement did not remove the previous fence without providing the notice of removal required by R.C. 971.17(A) and described earlier in this guide.
3. Claim for reimbursement. R.C. 971.07(B).
 - a. If parts one and two above have been satisfied, the landowner who built the fence, or a successor in interest to the landowner, may make a claim for reimbursement upon the adjoining landowner who uses the partition fence.
 - b. The amount of the claim for reimbursement shall be proportionate to the number of years the fence has existed, and shall be determined as follows:
 - i. Calculate the total costs of building and maintaining the fence as represented by affidavits of cost filed by the owner with the county pursuant to 971.07(A).
 - ii. Divide the total costs by one-thirtieth, which will represent the annual cost of the fence.
 - iii. Determine the number of *years or partial years* that the fence has existed, using the date the affidavit of costs was filed as the beginning date and the date on which the claim is being made as the ending date of the fence’s existence.
 - iv. Multiply the number of *years or partial years* by the annual cost of the fence (one-thirtieth of the total costs) and subtract that amount from the total costs. The resulting sum is the amount of the reimbursement claim.

4. Failure to pay claim. R.C. 971.07(C).
 - a. If an adjoining landowner fails to pay a claim for reimbursement filed according to 971.07(B), the owner who made the claim may file a claim in court to recover the amount.
 - b. The law does not require township trustees to resolve disputes over reimbursement claims; trustees have no jurisdiction over the reimbursement process.

5. Change to rule of equitable shares. R.C. 971.07(D).
 - a. Where an adjoining landowner pays a claim of reimbursement, either voluntarily or by court order, the rule of responsibility for the partition fence changes to one of equitable shares. Each landowner shall be responsible for maintaining the fence in the future in equitable shares.
 - b. If there is a future dispute regarding the fence, the board of township trustees would have jurisdiction over the dispute pursuant to R.C. 971.09.

6. Required modification of the partition fence. R.C. 971.07(B).
 - a. Where a reimbursement claim on a partition fence has been paid or ordered, the adjoining owners of the partition fence must modify the fence to ensure that it complies with the standards for a “preferred” partition fence as provided in R.C. 971.01(F) and explained earlier in this guide.
 - i. The landowners may agree in writing not to modify the fence, or to allow a fence that is not a “preferred” partition fence. The agreement must be recorded and is binding on all future owners of the adjoining lands. R.C. 971.04.
 - b. The adjoining landowners must equally divide the costs of modifying the partition fence.
 - c. Disputes over modifying the fence or payment of the costs for modifying the fence could be brought as a partition fence complaint before the board of township trustees, and the board would have jurisdiction pursuant to R.C. 971.09.

The OSU Extension Agricultural and Resource Law Program prepared this guide in partnership with the Ohio Township Association. This guide is intended for educational purposes and is not intended to provide legal advice or to enter into an attorney client relationship. A board of township trustees seeking legal interpretations of this law should rely upon the assistance of legal counsel.

For additional information on the Ohio Partition Fence Law, visit the website of the OSU Agricultural and Resource Law Program at <http://aede.osu.edu/programs/aglaw>.
