



Ohio Revised Code

Section 971.09 Action for costs of maintaining fence.

Effective: September 30, 2008

Legislation: House Bill 323 - 127th General Assembly

(A)(1) When an owner neglects to build or maintain in good repair a partition fence, or the portion thereof that the owner is required to build or maintain, the aggrieved owner may do either of the following:

(a) File an action in a court of common pleas as provided in section 971.16 of the Revised Code;

(b) File a complaint with the board of township trustees of the township in which the land or fence is located or is to be built.

(2) If the aggrieved owner intends to file a complaint with the applicable board of township trustees, the board shall present the aggrieved owner with a document containing both of the following:

(a) Notification that in lieu of filing a complaint with the board of township trustees as provided in this section, an action may be filed in a court of common pleas as provided in section 971.16 of the Revised Code;

(b) A description of the possible financial and maintenance responsibilities that may result from the board's findings.

The aggrieved owner shall sign and date the document and return it to the board prior to filing a complaint with the board.

(3) When a partition fence is on a township or county line, the boards of township trustees of the adjacent townships have concurrent jurisdiction, and the board of township trustees of either of the townships may be called to perform the applicable duties established in this chapter. Either party to the complaint may call the board of the other township, in which case they shall act jointly, but a separate record shall be made in both townships.



(B) If a complaint is filed with a board of township trustees, the board, after not less than ten days' written notice to all adjoining owners of the time and place of meeting, shall view the fence or premises where the fence is located or is to be built. At the meeting, the board shall determine whether a partition fence exists, regardless of whether it is in disrepair, or there is evidence that a partition fence previously existed. If there is no evidence that a partition fence exists, even in disrepair, or if there is no evidence that a partition fence previously existed, the board shall review the applicable county recorder's records to determine whether an affidavit has been filed in accordance with section 971.05, 971.06, or 971.07 of the Revised Code or an agreement has been filed in accordance with section 971.04 of the Revised Code.

(C) After viewing the fence or premises and reviewing the applicable county recorder's records, if applicable, the board may request additional information from either owner that is a party to the complaint.

(D)(1) At the next regularly scheduled meeting of the board after viewing the fence or premises and reviewing the applicable county recorder's records, if applicable, the board shall determine if a partition fence is required to be built or maintained in good repair, as applicable. If the board determines that a partition fence is required to be built or maintained, the board shall decide each owner's responsibility for building or maintaining in good repair the partition fence.

(2) If the board finds that both owners are responsible, the board shall equitably assign, in writing, each owner's share of building or maintaining in good repair the partition fence. When making an equitable assignment, the board may assign a specific portion of the partition fence to be built or maintained in good repair, or the board may assign a portion of the total cost of building or maintaining in good repair the partition fence if the owners have submitted to the board an estimate from a contractor of the necessary cost to perform the applicable work. If the partition fence does or will contain livestock, the board shall include in the equitable assignment the cost of building or modifying the fence to meet the standards for preferred partition fences established in this chapter.

(3) If the board finds that one owner is responsible, the board shall require that owner, in writing, to pay the total cost of building or maintaining in good repair the partition fence or the portion of the partition fence for which the owner is responsible, as applicable.



(4) If the board determines that a partition fence is not required to be built or maintained in good repair, as applicable, the board shall notify each owner of that determination in writing.

(E) When making an equitable assignment under division (D)(2) of this section, the board shall consider, without limitation, all of the following:

(1) The topography of the applicable property;

(2) The presence of streams, creeks, rivers, or other bodies of water;

(3) The presence of trees, vines, or other vegetation;

(4) The level of risk of trespassers on either property due to the population density surrounding the property or the recreational use of adjoining properties;

(5) The importance of marking division lines between the properties;

(6) The number and type of livestock owned by either owner that may be contained by the partition fence.

(F) The board shall certify a report of an assignment made under division (D)(2) of this section or a finding made under division (D)(3) of this section to the applicable county recorder, who shall record the assignment or finding in the partition fence record established under section 971.15 of the Revised Code.

(G)(1) If either owner does not agree to the board's assignment of responsibility under division (D)(2) of this section for building or maintaining in good repair a partition fence, the owner, not later than thirty days after the assignment has been made, may deliver to the board and the other owner a written request for binding arbitration. An owner that requests binding arbitration also shall deliver a copy of the request to the court of common pleas of the county in which the arbitration is to be held, which shall be the county in which the owner that seeks the binding arbitration resides. If either owner requests binding arbitration, the board shall submit a report of its recommendation of assignment that is made under division (D)(2) of this section or of its finding that is made under



division (D)(3) of this section, as applicable, to the court of common pleas in which the arbitration is to be held.

(2) The court of common pleas in which the arbitration is to be held shall appoint an arbitrator. The court shall furnish the board's report that is submitted to the court under division (G)(1) of this section to the arbitrator. The owners shall pay the costs of the arbitrator's services in equal amounts. An arbitrator that has knowledge of this chapter shall be appointed, if possible.

(3) Not later than thirty days after appointment of an arbitrator, each owner and the board shall deliver to the arbitrator a recommendation for the assignment of responsibility for building or maintaining in good repair the partition fence. Not later than sixty days after appointment of the arbitrator, the arbitrator shall approve one of the recommendations submitted or assign responsibility for building or maintaining in good repair the partition fence based on the arbitrator's judgment.

The arbitrator shall deliver to each owner and the board a written statement of the arbitration decision that states each owner's responsibility for building or maintaining in good repair the partition fence. The arbitrator shall certify a report of the arbitration decision to the applicable county recorder, who shall record the decision in the partition fence record established under section 971.15 of the Revised Code.

The owners shall abide by the arbitration decision. The arbitration decision shall be enforced, upon petition by either owner, by the court of common pleas of the county in which the petitioner resides.