

TITLE 35
FENCES

CHAPTER 1
FENCES IN GENERAL

35-101. **LAWFUL FENCES IN GENERAL.** A lawful fence, except as hereinafter provided, must be not less than four and one-half (4 1/2) feet high, and the bottom board, rail, pole or wire must not be more than twenty (20") inches above the ground, and the space between the top and bottom board, rail, pole or wire must be well divided.

[(35-101) R.S., sec. 1300; reen. R.C. & C.L., sec. 1264; C.S., sec. 1956; I.C.A., sec. 34-101.]

35-102. **LAWFUL FENCES DESCRIBED.** Lawful fences are described as follows:

1. If made of stone, four feet (4') high, two feet (2') base, and one foot (1') thick on top.

2. If it be a worm fence, the rails must be well laid and at least four feet (4') high.

3. If made of posts, with boards, rails or poles, the posts must be well set in the ground and not more than eight feet (8') apart, with not less than three (3) six-inch (6") boards, or rails, or poles not less than two and one-half inches (2 1/2) in diameter at the small end; if four (4) poles are used, they must not be less than two inches (2") in diameter at the small end. The top board, rail or pole must not be less than four feet (4') from the ground, the spaces well divided, and the boards, rails or poles securely fastened to the posts; if poles not less than three inches (3") in diameter at the small end are used, the posts may be set twelve feet (12') apart.

4. If wire be used in the construction of fences, the posts must not be more than twenty-four feet (24') apart, set substantially in the ground, and three (3) substantial stays must be placed at equal distances between the posts, and all wires must be securely fastened to each post and stay with not less than three (3) barbed wires, or four (4) coiled spring wires of not less than number nine (9) gauge. The bottom wire shall be not more than twenty-one inches (21") from the ground, and the other wires a proper distance apart. The wires must be well stretched and the fence not less than forty-seven inches (47") high. If all woven wire fencing is used, the top and bottom wire must be not less than number nine (9) gauge, or two (2) number thirteen (13) gauge wires twisted together, with intermediate bars not less than twelve inches (12") apart and of not less than number fourteen (14) gauge wire, and the stay wires not more than twelve inches (12") apart, and the top wire not less than forty-seven inches (47") from the ground. If woven wire less in height is used, it must be brought to the height of forty-seven inches (47") by additional barbed wires, or coiled spring wire of not less than number nine (9) gauge, and not more than twelve inches (12") between the wires: provided, that if barbed wire only is used, and the posts are not more than sixteen feet (16') apart, no stays need be used. Provided further that the minimum forty-seven inch (47") fence height specified above may be reduced to forty-two inches (42") for right-of-way fences on the state highway system when mutually agreed by the Idaho director of department of transportation and the director of the Idaho fish and game department as necessary to accommodate big game animals at major migration crossings.

5. If made in whole or in part of brush, ditch, pickets, hedge, or any other materials, the fence, to be lawful, must be equal in strength and capacity to turn stock, to the fence above described.

6. All fences in good repair, of suitable material and of every description, and all creeks, brooks, rivers, sloughs, ponds, bluffs, hills or mountains, that present a suitable obstruction to stock are deemed lawful fences.

[(35-102) R.S., sec. 1301; am. 1901, p. 207, sec. 1; am. 1907, p. 132, sec. 1; reen. R.C. & C.L., sec. 1265; C.S., sec. 1957; I.C.A., sec. 34-102; am. 1967, ch. 261, sec. 1, p. 731.]

35-103. ERECTION OF PARTITION FENCES. When two or more persons own land adjoining which is inclosed by one (1) fence, and it becomes necessary for the protection of the rights and interests of one (1) party that a partition fence be made between them, the other or others, when notified, must proceed to erect, or cause to be erected, one-half (1/2) of such partition fence; said fence to be erected on, or as near as practicable to, the line of said land. And if, after notice given in writing, either party fails to erect and complete, within six (6) months time thereafter, one-half (1/2) of such fence, the party giving the notice may proceed to erect the entire partition fence and collect by law one-half the costs of such fence from the other party, and he has a lien upon the land thus partitioned.

[(35-103) 1885, p. 118, sec. 1; R.S., sec. 1302; reen. R.C. & C.L., sec. 1266; C.S., sec. 1958; I.C.A., sec. 34-103.]

35-104. CARE OF FENCES BY ADJOINING OWNERS. Each adjoining land owner, unless both otherwise agree, or unless other arrangements have heretofore been made, must construct and keep in repair that half of the line fence between their respective tracts of land which is to his left when he is standing on his own land facing the other; unless the owner of one (1) of said tracts choose to allow his land to be uninclosed: provided, that one (1) party may, for his own convenience, strengthen, or render hog-tight, the whole or any part of said fence by stretching one (1) or more additional wires thereon or otherwise; in which event the other shall not be liable for his proportion of the additional cost: provided further, if one (1) of the parties shall render such fence hog-tight and the other shall at any time use his field for the pasture of hogs, sheep or goats, without a herder, such other shall become liable as a joint user or owner, and shall, upon demand of the party building the hog-tight fence, pay his just proportion thereof. In case viewers are appointed, as provided in section [35-106](#), the report of such viewers must be in conformity with this section.

[(35-104) 1885, p. 118, sec. 1; R.S., sec. 1303; am. 1907, p. 133, sec. 2; reen. R.C. & C.L., sec. 1267; C.S., sec. 1959; I.C.A., sec. 34-104.]

35-105. USE OF DIVISION FENCE IN MAKING INCLOSURE. When one (1) of such adjoining proprietors has allowed his land to lie uninclosed, and afterward incloses it, he owes and is indebted to such adjoining owner one-half (1/2) the value of any division fence owned by the other, used by him in forming such inclosure; and each must thereafter keep one-half (1/2) of such fence in repair.

[(35-105) 1885, p. 118, sec. 1; R.S., sec. 1304; reen. R.C. & C.L., sec. 1268; C.S., sec. 1960; I.C.A., sec. 34-105.]

35-106. DISAGREEMENT BETWEEN OWNERS -- VIEWERS. If adjoining proprietors cannot agree as to the proportion or the particular part of a division fence to be made, maintained or kept in repair by each respectively, either party may apply, on five (5) days' notice, to a magistrate judge, for the appointment of three (3) viewers, who may examine witnesses on oath, and view the premises and must determine:

1. If the fence is owned by one (1) proprietor, how much the other must pay as his proportion of the value.

2. If the fence or the whole thereof is not built, which part thereof must afterward be built and kept in repair by each.

The determination of the viewers must be reduced to writing and signed by them, and filed in the office of the county recorder, and such determination is conclusive upon the parties. If any part of such determination consists in fixing the value of a fence for which one (1) party is to pay the other a proportion also fixed, such proportion must be paid within thirty (30) days after notice of such determination, and if not so paid, may be recovered by action in any court of competent jurisdiction. The viewers are entitled to a fee of three dollars (\$3.00) each, one-half (1/2) to be paid by each proprietor.

[(35-106) 1885, p. 118, sec. 1; R.S., sec. 1305; reen. R.C. & C.L., sec. 1269; C.S., sec. 1961; I.C.A., sec. 34-106; am. 2012, ch. 20, sec. 18, p. 70.]

35-107. PROHIBITION AGAINST REMOVAL. When one (1) party ceases to improve his land, or open his inclosure, he must not take away any part of the partition fence belonging to him and adjoining the next inclosure, if the owner or occupant of such adjoining inclosure will, within two (2) months, after the same is ascertained, pay therefor such sum as is agreed upon by the parties, or, if failing to agree, then such sum as may be adjudged by viewers as provided in the last section; nor must such partition fence be removed when by so doing it will expose to destruction any crops in such inclosures.

[(35-107) 1885, p. 118, sec. 4; am. R.S., sec. 1306; reen. R.C. & C.L., sec. 1270; C.S., sec. 1962; I.C.A., sec. 34-107.]

35-108. REMOVAL OF FENCE BUILT BY MISTAKE. When any person has built, by mistake and in good faith, a fence on the land of another, such person or his successor in interest may, within one (1) year from the time of discovering such mistake, go upon the land of such other person and remove such fence, doing no unnecessary damage thereby.

[(35-108) 1885, p. 118, sec. 5; am. R.S., sec. 1307; reen. R.C. & C.L., sec. 1271; C.S., sec. 1963; I.C.A., sec. 34-108.]

35-109. RESTRICTIONS ON OCCUPANT'S RIGHT TO REMOVE FENCE. The occupant or owner of land whereon a fence has been built by mistake, must not throw down or in any manner disturb such fence during the period which the person who built it is authorized by section [35-108](#) to remove it, when by so doing he will expose any crop to destruction.

[(35-109) 1885, p. 118, sec. 6; am. R.S., sec. 1308; reen. R.C. & C.L., sec. 1272; C.S., sec. 1964; I.C.A., sec. 34-109.]

35-110. SURVEY OF LINE. The person building such fence, or the occupant or owner of the land whereon the same is built, may, upon notice to the other party, whenever doubts arise about the location of such fence, procure the services of a professional land surveyor to establish the boundary line between their respective lands, and the line so established is sufficient notice to the party making the mistake, so as to require him to remove such fence within one (1) year thereafter.

[(35-110) 1885, p. 118, sec. 7; am. R.S., sec. 1309; reen. R.C. & C.L., sec. 1273; C.S., sec. 1965; I.C.A., sec. 34-110; am. 1963, ch. 87, sec. 1, p. 282; am. 2002, ch. 7, sec. 1, p. 10.]

35-111. REMOVAL OF PARTITION FENCE. In all cases where the inclosures of two (2) or more persons are divided by a partition fence of any kind, and either of the parties thinks proper to vacate his part of such inclosure, or to make a lane of passage between such adjoining inclosures, such person is at liberty to remove his share or part of such partition fence, on giving six (6) 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.

[(35-111) 1885, p. 118, sec. 8; am. R.S., sec. 1310; reen. R.C. & C.L., sec. 1274; C.S., sec. 1966; I.C.A., sec. 34-111.]

35-112. ESTABLISHMENT OF GATES. In all cases where a partition fence exists between parties, and a gate is established for passage through their lands, any other person may pass through such gate free, doing no unnecessary damage, and if any such person leave any such gate open, or does other damage to the premises, he is liable to the party aggrieved in double damages.

[(35-112) 1885, p. 118, sec. 9; am. R.S., sec. 1311; reen. R.C. & C.L., sec. 1275; C.S., sec. 1967; I.C.A., sec. 34-112.]