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Handbook on Fence Viewers and Laws on Fences in the Commonwealth of Massachusetts

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HANDBOOK ON FENCE VIEWERS
AND
LAWS ON FENCES IN THE
COMMONWEALTH OF MASSACHUSETTS



Photograph by Robert Lord Keyes

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Fence Viewers, Town of Pelham

**HANDBOOK ON FENCE VIEWERS AND LAWS ON FENCES
IN THE COMMONWEALTH OF MASSACHUSETTS**

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INTRODUCTION

This handbook is intended to serve as an informal guide to the laws that pertain to Fence Viewers and fencing in general in the Commonwealth of Massachusetts. We have used two primary sources for the current Massachusetts laws. We first searched the unofficial on-line text of the Massachusetts General Laws provided on the Internet (<http://www.state.ma.us/legis/laws/mgl/>) by the State Senate. This was followed by an examination of the laws, court decisions and notes as they appear in the most recent volumes and annual supplements of *Massachusetts General Laws Annotated (1977)*.

In every instance, the text describing each law consists only of a summary of the full language. Although the authors have done their best to be accurate, we have not been able to be complete. Readers must consult the original statutes or *Massachusetts General Laws Annotated (1997)* for a full and complete statement of each law and for extensive court decisions. It should also be noted that the Attorney General of Massachusetts has issued an opinion that the statutes on fences do not apply to state owned land of the Commonwealth (8 Op. Atty. Gen. 1928, p. 473).

This Handbook does not constitute legal advice. City and town Fence Viewers should consult their City Solicitor or Town Counsel if any questions arise. Other users should consult their own lawyer.

Readers should be aware that the laws change. Current supplements to *Massachusetts General Laws Annotated* should be consulted in city and town offices, public libraries, or the Trial Court Libraries.

NOTE: All text citations in *italics* within parentheses, for example, (§15), are to Sections in *Massachusetts General Laws, Chapter 49*, unless otherwise noted. Citations to other Chapters indicate both Chapter and Section.

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Chapter 1 - BACKGROUND

History of Fence Viewers

The origin of the position of Fence Viewer in the towns of Massachusetts dates from 1647 when the Massachusetts Bay colonial government recognized that corn crops had to be protected from cattle by good fences. (*The General Laws and Liberties of Massachusetts Bay. Chapter XIX Sec 6*) The Selectmen of all Towns were ordered to ensure that fences be upheld and maintained. Fines were authorized, and the Selectmen were ordered to appoint two or more persons "...to view the common fences, of all their corn fields, to the end, to take due notice of the real defects and insufficiency thereof..." Procedures were established by which Fence Viewers were to deal with landowners, to determine who paid the costs for construction and repairs, and how to handle complaints about cattle that caused damage because they were not properly constrained.

The law regarding appointments of Fence Viewers has not been changed in any material way since 1647, or 1793, when Samuel Freeman described the duties of town officers. Although their general responsibilities, and the laws governing who is responsible for fencing and how the costs are met, have changed, many of the original colonial phrases can still be found in the current state statutes.

In his treatise on the law of boundaries and fences, Ransom (1876) reviews the laws and court decisions on fence viewers in Massachusetts. By the mid-1800's the law required adjoining parties to share in the cost of fence building and repair so long as both parties had "improved" their land. Improving in those days meant some form of product agriculture and courts had also started to rule on the fencing responsibilities of railroads. Through a series of court cases the procedures that Fence Viewers must follow in arriving at their decisions had been refined in detail. State statutes had been passed to address how orders were issued by Fence Viewers, fines, water fences, lands occupied in common and cases where the legal boundary between landowners was unknown. These statutes and rulings persist in large part in the re-codified *Massachusetts General Laws* today.

Dodge (1921), in his chapter on fences in *Corpus Juris*, reviews the fence viewer statutes and case law of many states. He states that "The duties and functions of fence viewers are judicial in their nature," citing case law in Iowa, Minnesota, New Hampshire, and Pennsylvania. Massachusetts' case law agrees (*Massachusetts General Laws Annotated Ch 49 §6 Note 2*). However, Dodge says they do not constitute a court but are regarded in some states as being analogous to appraisers, inspectors, or arbitrators. Their powers are limited strictly by statute and when they exceed those limits their determinations are void.

An important conclusion to be drawn from *Corpus Juris* is that Fence Viewers need to pay scrupulous attention to following correct procedures. Persons whose rights will be affected by decisions of fence viewers must have notice of the time and place of the proceedings. Selection of the time and place should be "reasonable." To avoid later challenges, the notice should be in writing, even if the statute does not specifically

require this. In form and content the notice needs to be explicit and complete with regard to the matters to be addressed. A written decision need not be made at the time of the “view” but it should be put in writing and delivered to all parties. An order or notice to build or fix a fence should specify a reasonable time for completion, and be specific as to which part of the fence is involved. To this end the authors have included an Appendix to this text consisting of suggested forms for use by Massachusetts fence viewers.

Ludes and Gilbert (1961), editors of *Corpus Juris Secundum*, say in §13(1) that Fence Viewers “constitute a tribunal of limited jurisdiction.” They reaffirm the judicial nature of their duties, and agree that they do not constitute a court. They add a number of observations to those in *Corpus Juris*. They note that Fence Viewers may be constrained in their scope of action by the notice, complaint, or application put to them by the person applying for a decision. In other words, Fence Viewers should not, at the viewing, take up any other issues than those described in the application for their services. This probably means that new issues revealed on the site can only be addressed after receipt of a new application and due notice given. They note that under common law a fence viewer who is related, within the fourth degree, to one of the parties is disqualified to act. Thus, appointment of more than one fence viewer in a town appears to be a basic precaution against avoidable disputes over decisions. Fence Viewers need to take an oath of office, but they have no power to settle disputes over the rights of title between different claimants of land, nor are they empowered to establish property boundary lines.

Corpus Juris Secundum reaffirms the need for Fence Viewers to pay strict attention to procedures and further states that Fence Viewers must base their determinations on personal inspection. Fence Viewers should display their appointment papers to the parties at the time of the viewing. The inspection need not be made by all the members at the same time but the determination must be made by them sitting as a board. Unless there is evidence that a Fence Viewer has refused to act, all must join in the determination. The parties in the dispute may agree to proceed in the absence of one of the Fence Viewers. Although the editors do not say so, it would appear that all Fence Viewers should be involved in each action, and if there are frequent calls for viewing, it would be wise for the Selectmen to appoint more than two Fence Viewers. However, it appears that the qualifications of a Fence Viewer who is appointed just a short time before a viewing takes place could be challenged by one of the parties.

For an interesting account of the history of Fence Viewers, and their activities over the decades, readers are directed to the chapter titled “As American as a Fence Viewer or a Town Pound” in Susan Allport’s book *Sermons in Stone*.

Fence Viewers and the Law, Yesterday and Today

By the mid 1800’s most of the land area in Massachusetts had been cleared for agriculture. Forests remained only on the highest elevations and on the most rocky and wet sites. Fences and stone walls separated the fields. Today most of the previously cleared land of Massachusetts has reverted to forest. Miles of stone walls now run under

oaks, hemlocks, and pines. The agricultural croplands that were the source of problems addressed by the early fence viewers are gone and not likely to return. Large areas of the eastern part of the state are in suburban and urban development. Fences there now serve other purposes. When fence viewers were first established each town was dependent on raising most of its own food for survival. There was an overriding public interest in maintaining separation between domestic animals and cropland. Successes in raising both were required for community survival. Erecting and maintaining fences between them helped to ensure survival and it was deemed reasonable that all parties share in the cost. If they could not agree, fence viewers were authorized to arrive at solutions that would be enforced by the courts.

But land use patterns in the eastern United States have so changed that state courts in Vermont and New York have found laws requiring adjoining landowners to share in the costs of fencing unconstitutional (*Choquette v. Perrault* 153 Vt. 45, 1989; *Sweeney v. Murphy* 334 N.Y.S. 2d 239, 1972, affd, 342 N.Y.S. 2d 70, 1973). In both the Vermont and New York cases, the fence viewers had ruled that landowners who did not have livestock had to share the cost of fencing with their neighbors who did have livestock. The courts of both states found that under today's land use patterns enforcement of the law that mandated sharing the costs no longer met any reasonable public purpose.

In a more recent case in the west, however, the Iowa Supreme Court upheld the principle of shared responsibility for fence maintenance regardless of whether a landowner on one side of the fence keeps animals and the owner on the other side does not (*Supreme Court of Iowa, No. 68/99-1186 Filed May 31, 2001*). In this case two livestock farms had demanded that their non-livestock neighbor maintain fences along their joint boundary. The Supreme Court's decision was rendered, despite an Iowa law (*Iowa Code chapter 169C Supp. 1997*) that holds the owner of livestock liable for damage caused by trespassing animals *unless* the animals had trespassed through a fence where damaged party had not participated in maintaining the fence under the fence viewer statute (*Iowa Code section 359A.1*.) The Iowa Supreme Court held that under Iowa law the statutory liability and the obligation to share the fencing responsibility were two different matters. In its decision the Court went further to explain their interpretation of Iowa law saying, "The fencing statute does not merely benefit livestock owners. It serves the broader public good by mediating boundary, fence and trespass disputes." And, "... the duty to maintain fences must be shared by adjoining landowners once such relief is demanded."

The poet Robert Frost may have sensed the impact of land use change in the east was to have on fencing (Lathem 1969). In his poem "Mending Wall," Frost, owner of an apple orchard, pointed out to his neighbor, owner of a pine forest, while they repaired the stonewall between them, that his apple trees would never cross the wall to eat the pine cones. The neighbor's response was, "Good fences make good neighbors." Of his neighbor Frost says:

".....I see him there
Bringing a stone grasped firmly by the top
In each hand, like an old-stone savage armed.
He moves in darkness as it seems to me,....."

These court rulings suggest that fence viewers' decisions in the eastern United States may not stand judicial review if it cannot be shown that both landowners benefit equally from adequate fencing. Massachusetts' law states "The occupants of adjoining lands enclosed with fences shall, so long as both of them improve the same, maintain fences in equal shares between their enclosures, unless they otherwise agree" (§3). "Improve" in Colonial days meant productive agriculture. Today, it may well mean demonstrated mutual benefit. For example, where adjoining owners both raise horses, the fence is at equal risk from both sides and would protect both so long as they continued to raise horses. A case might be made that both owners, and their animals, benefit equally from the protection that a fence affords. At any rate, the scope of circumstances within a fence viewer's decision to enforce shared costs appears to have been narrowed considerably.

Since Massachusetts' fence viewers are paid at a magnificent rate of five (5) dollars per day employed, we may assume that persons willing to accept the appointment may be willing to engage, as private persons, in other projects that are not within the statutory description of their positions. In Pelham, the compilation of laws for this handbook has proven valuable to the Building Inspector, who happens to serve several towns in this capacity. He receives at least two calls a week on fence issues. In many situations, fences and stone walls still mark the boundaries of land ownership, or appear to. As large tracts of land have been subdivided, wooden stakes, iron pins, pipes or other markers have been set in the walls or fence lines to show the point where a new property line departs from the old fence or wall. Wooden stakes decay and break off. Brush, fallen trees or earth from a road improvement project can cover pipes or pins. While fence viewers are not surveyors, they can often help a landowner uncover a "lost" marker or find other evidence that can help a surveyor later re-establish a point or line. A fence viewer who can read a deed and surveyor's map, and run a compass line and tape can help landowners who are trying to discover the "metes and bounds" of their land. A metal detector can be a very useful aid. Fence Viewers can often identify situations when it would be wise for a landowner to hire a surveyor. They can work with adjoining landowners to agree on a temporary fence until the true boundary can be determined.

An increasing number of towns in Massachusetts are adopting scenic road by-laws (*Ch 40 §15C*) to protect trees and stone walls when roads are repaired or widened. Fence viewers can make an inventory of the stone walls subject to this by-law for the Planning Board and Highway Superintendent. They can mark them on town maps so that all officials and landowners can be aware of them well before the start of a road project. Some towns are enacting by-laws to protect stone walls as valued parts of the town's cultural history and heritage. Some towns, like Petersham, have mapped all their stone walls. Fence viewers can assist town Historical Commissions or historical societies do a stone wall inventory. We hope that this handbook will enable Massachusetts Fence Viewers assist other town officials locate key laws when they encounter fencing issues in the course of their duties.

It should be noted again that when Fence Viewers do engage in other activities they do so as private individuals, not as town officials.

Chapter 2 – SUMMARY OF CURRENT LAWS GOVERNING FENCE VIEWERS

Fence Viewers, Powers, Responsibilities, Fees

Appointment

The city council or selectmen of each city and town are required to appoint two or more fence viewers, annually, to serve for a term of one year, and until their successors are qualified. (§1)

Powers and Responsibilities

Fence viewers have the responsibility, when requested, to settle disputes over the erection, maintenance, or repair of partition fences (§3) that separate parcels of land owned by different individuals. (§6)

Acting on Complaints

After receiving a complaint, the fence viewers must notify each party of the date and time that they intend to view the fence. They must first determine if a partition fence is necessary. (§18) If they determine that one is necessary (§4), they then determine if the present fence is insufficient, and which party is delinquent (§6,7,8)

Reporting Requirements

The fence viewers must inform both parties of their decisions in a written report. (§4) The report includes their direction for required repair or rebuilding. It also includes the time within which the work must be accomplished. (§4) The party that requested action by the fence viewers must take the written decision to the Town Clerk for recording and pay a recording fee of one dollar, plus an additional charge of twenty-five cents for each additional name on the record. (Ch. 262 §34, 79)

Failure of the Delinquent Party to Abide by the Fence Viewer's Decision

If the fence work is not done as required, the complaining party, after repairing his part of the fence, may proceed to repair or rebuild the part of the delinquent party. (§4, 6, 18) If the fence viewers judge the work by the complainant sufficient, the complainant may sue the other party in court for double the amount, plus interest, of the value of the cost of the delinquent party's share, plus the cost of the fence viewers' fees. The fence viewers are responsible for certifying the values involved. (§5,7)

If the fence viewers have determined that a partition fence is required, and one of the parties voluntarily constructs the whole of the fence, or more than his fair share, the fence viewers may order the other party to pay his fair share of the costs, as determined by the fence viewers. (§8)

Disputed Division or Property Lines

If the division line between lands owned by two parties is in dispute, or unknown, the fence viewers may designate a line on which the fence shall be built, and maintained. The fence viewers may employ a surveyor to designate the line. The line established by the fence viewers, or their surveyor, shall be considered the line for maintaining a fence until such time as the true division line is determined. (§14) If the true decision line is subsequently found to be in another place, the adjoining owners must remove and rebuild the fence on the true line. The fence viewers are empowered to ensure that this work is done. (§15)

Significance of Fence Viewer Decisions and Payment for Services

Decisions rendered by fence viewers are not trivial. They are binding upon both parties and upon all succeeding occupants of the land. (§6) But a fence viewer who fails to perform any duty required by law may be required to forfeit five dollars to the town or state and be liable for damages to injured parties. (§19). Fence viewers are paid the magnificent sum of five (5) dollars per day for their time employed, but not less than one (1) dollar in any one case, paid for by the landowners involved in the case. (20)

Fences Defined

Massachusetts' Definition

An old farmer's rule of thumb is that a good fence must be "horse high, hog tight and bull strong." But Massachusetts' law is specific about what constitutes an adequate fence. Fence Viewers are given some discretion in the matter. Fences four feet high, in good repair, constructed of rails, timber, boards, iron or stone, and brooks, rivers, ponds, creeks, ditches and hedges, or other things that the Fence Viewers consider equivalent, are deemed legal and sufficient fences. (§2)

Partition Fences and Their Maintenance

In Massachusetts law the term "partition fence" means a fence that separates adjoining lands owned by different persons. As long as these fences improve the land on each side, both owners share equally in their maintenance. (§3 and see below 4, 8(see below), 18)

Fences and Water Bodies

If two properties are divided by a river, brook, pond, or creek, and there is a disagreement over making a fence, the fence viewers, upon application, view the site to determine if the water body constitutes a sufficient fence. If they decide that it does not, and that it is impractical to make a fence on the boundary line, they make a decision on the location of a fence, how it is to be maintained and how the costs are to be shared, as in other disputed situations. (§9)

Spite Fences

A spite fence is a fence, or similar structure, that exceeds six feet in height, and is maliciously erected or maintained in order to annoy the owners or occupants of adjoining property. The injured party may sue in court for damages under *Ch. 243 §21*.

Water Fences

Adjoining landowners may agree to build a water fence or a fence running into the water, in equal shares under the same provisions that apply to all partition fences. (§17)

Fences on Town Boundaries

If a property line where a partition fence is located is also on the boundary line between one city or town and another, or is partly in one town and partly in another, fence viewers from each town will participate in the proceedings. (§16)

Fencing Common and Unenclosed Land

Fences on Lands Owned in Severalty and Occupied in Common

In some cases, two parties own land in severalty and may have occupied the land in common without a partition fence. If both parties have animals that would be separated by a partition fence, one party may petition to the fence viewers to locate and require erection of a partition fence. (§10) A person who wishes to revert land to common use, and gives proper notice to owners of the adjoining land, is not required to share in the maintenance of a partition fence. (§11)

Removal of One Person's Share of a Fence and Purchase of Rights in Fences

One party may not remove his portion of a partition fence if the other party pays a reasonable value for his part of the fence. The fence viewers determine the amount to be paid. (§12)

Fencing Formerly Unenclosed Land

When formerly unenclosed land becomes fenced, the adjoining owners must pay equally for the cost of the fence. The fence viewers determine the value of the fence. If one of the parties does not make the payment within 30 days, the aggrieved party may sue in court. There is a special exemption for the island of Nantucket. (§13)

Real Estate Lying in Common

Whole fences enclosing fields held in common by multiple proprietors shall be apportioned among them according to the number of acres held by each. Two or more fence viewers shall make the apportionment unless the proprietors make an agreement among themselves. The proportion of each fence of each proprietor shall be recorded on the books of the proprietors by the clerk, if any; otherwise by the Town Clerk. If a proprietor fails to maintain his portion of the fence, and he fails to do so within three days of receiving a notice from a fence viewer, any other proprietor may make the repair and two or more fence viewers shall determine the cost of that repair. The proprietor may sue for payment at double the cost of the repairs. If a part of the fence is suddenly destroyed by wind or flood, and crops or grass in the field are in immediate danger, the proprietor assigned to that fence must repair it within twenty-four hours of receipt of a notice from a fence viewer. If he fails to do so the work may be done by any other proprietor who may sue for recovery of double the costs. (*Ch. 179 §28, 31, 32, 33*)

A proprietor of land bordering a common field may enclose his own land, and as long as he keeps it enclosed with a sufficient fence. He may use it as he sees fit without being assessed for any expenses incident to the common field. (*Ch179§34*).

If the proprietors of five or more parcels wish to enclose them in one common field, the superior court may order it so enclosed. (*Ch179§36*)

Chapter 3 – OTHER MASSACHUSETTS LAWS RELATED TO FENCES

Fence viewers are not involved in all fencing issues under Massachusetts' law. But they can be a local source for information. We have compiled the following provisions by searching the state's Internet site on Massachusetts General Laws.

Barbed Wire Fences

Barbed wire fences less than six feet above the ground may not be built or maintained along a sidewalk located on a public way. A fine of twenty to fifty dollars may be assessed. (*Ch 86 §6 and see below*)

Unauthorized Removal, Injury or Defacement of Fences

Persons who willfully and without right pull down or remove a portion of a stone wall or fence are subject to a fine of not more than ten dollars. Natural resource officers and deputy natural resource officers are empowered to arrest, without warrant, any person violating this law. (*Ch 266, §105*)

Persons who deface or put stickers on fences or throw down gates, bars, or fences may be punished by imprisonment or fine and loss of driving license, for not more than six months, or be fined for not more than five hundred dollars. Police officers may make arrests without warrant for some of these offences. (*Ch 266 §114, 126, 126A, and 126B*) Persons who destroy or remove fences, or play games thereon, around public parks, playgrounds and the public domain may be fined. (*Ch 45 §13*)

It is a crime (with different levels of punishment) to burn or otherwise damage a fence (*Ch266§5*) or a fence associated with an educational or religious building. (*Ch266§98*)

Only persons authorized by the landowner are allowed to remove a chipmunk, fox, squirrel, red squirrel, porcupine, skunk, weasel, wildcat, or woodchuck from under a stone wall. (*Ch 131 §76*)

Fencing Accidental Releases of Oil or Hazardous Material

In the event of accidental release of oil or other hazardous waste, the persons responsible for the property, a secured lender, or the city or town, or the tenant, or development authority, may erect reasonable fencing to limit and restrict access to a site or vessel where the release was made, to prevent exposure of persons to oil or hazardous waste. (*Ch. 21E §2*)

Other City and Town Fencing Powers

Cities and towns may require fencing to prohibit or regulate removal of soil, loam, sand or gravel not in public use (*Ch.40§21(17)*), for improvement of open spaces (*Ch45§12*), and to provide protection along canals or waterways. (*Ch88§12,13*)

Historical Commissions in cities and towns may or may not have jurisdiction over walls or fences in a historic district, depending on the local ordinance or by-law establishing the district. (*Ch. 40C §5,8(a)(3)*)

Towns are authorized to raise and appropriate sums necessary for fencing burial grounds containing ten or more graves. These burial grounds are the responsibility of the town cemetery commission or selectmen. (*Ch. 114 §16,18*) The city or town veteran's graves officer is responsible for the replacement and general up-keep of fences around veteran's graves. (*Ch 115 §9*) Damaging fences around tombs, graves, memorials, trees, and plants placed to memorialize the dead is a criminal offense. (*Ch272§73,74*)

Fences Along Public Ways

State Highways

No occupant of land adjoining a state highway has a right to have a fence encroach on the highway. (*Ch. 81 §22*)

Boundaries or Encroachments on Highways and Other Public Places

When a fence has been erected and maintained for twenty years fronting on a highway, town way, private way, training field, burying place, landing place, street, lane or alley, or other land appropriated for the convenience of the inhabitants of the commonwealth, or of a county, city, town or parish, and the boundaries cannot be determined by records or by monuments, the fences shall be taken as the true boundaries.

If the bounds of a public way are known, or can be determined, no occupant or owner of adjacent land may have a fence encroaching on the way.

Any person may remove gates, rails, bars or fences that cross public or private ways legally laid out, unless they have been placed to prevent spread of disease injurious to public health, or erected under license from a county or local authority. (*Ch. 86 §2, 3, 5, 6 and see also §4 for court ordered removals and see Ch 82 §6, 37 for walls and fences relative to building lines along public ways*)

Excavations Near Public Ways

Owners of land abutting public ways must erect a fence not less than five feet high, at the street line, if there is an excavation within fifty feet of the way. (*Ch.84§27A*)

Fencing for Public Health Purposes

When fences, gates or bars have been erected to prevent the spread of diseases dangerous to public health, they may not be removed without an order from the local Board of Health. (*Ch. 84 §8*)

Landscape Architects, Planners and Fencing Plans

State professional registration law does not prevent landscape architects, and city and regional planners from consulting and preparing plans that include fences and walls. (*Ch. 112 §60L(7)*)

Fencing at Houses of Correction

The authorities in charge of houses of correction have the authority to erect and maintain fences of dimensions that they deem necessary to prevent escapes and unauthorized access to the yards of the facility. (*Ch 126 §9*)

Fencing Junkyards, Motor Vehicle Graveyards, and Towing Storage Areas

The state Department of Public Safety has the authority to promulgate rules and regulations governing the location, construction and maintenance of screens or fences around certain junkyards, automobile graveyards, motor vehicle junkyards, and towing storage areas. (*Ch 140B §3; Ch 140 §54A, 59A; Ch 159B§6B*)

Railroad Fencing

Railroad corporations are required to erect and maintain suitable fences, with convenient bars, gates or openings, along both sides of the entire length of the railroad, except at crossings of a public way. Fines and other penalties are provided for non-compliance. (*Ch. 160 §90, 91, 93, 94*)

General Fencing Requirements for Public Safety, Fire Safety, and Good Order

Public and semipublic outdoor in-ground swimming pools must be fenced. (*Ch140§206*). Under the law regarding buildings, elevators and cinematographs, fences are considered “structures” (*Ch143§1*) and fences must be erected when these buildings are removed (*Ch143§7,9*). Fences are “structures” under the laws regarding fire protection (*Ch148§1*).

Provisions for Fences as Real Property and Building Restrictions

Provisions are made for fences under the law governing passing title to real estate abutting a fence (*Ch183§58*) and pressing lawsuits to alter building restrictions. (*Ch184§23A*)

Fencing for Improvement and Safety of Waterways

The state department of public works may construct, reconstruct, alter and repair walls for the improvement and safety of waterways. (*Ch 91 §11*)

REFERENCES CITED

Allport, Susan. 1990. *Sermons in Stone: The Stone Walls of New England and New York*. W. W. Norton & Company, New York and London. 205 pages.

Dodge, P. H. 1921. *Fences*. In W. Mack, W. B. Hale, and D. J. Kiser, Eds. *Corpus Juris, Being a Complete and Systematic Statement of the Whole Body of the Law as Embodied in and Developed by All Reported Decisions*. Vol. XXV. The American Law Book Co. N.Y., N. Y.

Freeman, S. Esq. 1793. *The Town Officer; or the Power and Duty of Selectmen, Town Clerks, Town Treasurers, Overseers of the Poor, Assessors, Constables, Collectors of Taxes, Surveyors of High Ways, Surveyors of Lumber, Fence Viewers, and other Town Officers as Contained in the Laws of the Commonwealth of Massachusetts*. L. Thomas and E.T. Andrews, Proprietors of the Work, Faust's Statue, No. 45 Newbury Street, Boston.

Lathem, E. C., ed. 1969. *The Poetry of Robert Frost*. Holt, Rinehart and Winston, N.Y.

Ludes, F. J. and H. J. Gilbert, Eds. 1961. *Corpus Juris Secundum*. American Law Book Co., Brooklyn, N. Y. Vol. 36A.

"*Massachusetts General Laws, Annotated*." 1977 (with annual supplements). West Group, St. Paul, Minn.

Ransom, H. 1876. *A Treatise on the Law of Boundaries and Fences, Including the Rights of Property on the Sea-Shore and in the lands of Public Rivers and Other Streams, and the Law of Window Lights*. William Gould and Son, Albany, N. Y. 596 pages.

"*The General Laws and Liberties of Massachusetts Bay*." 1814. Chapter XIX. Sect. 6, 7, 8. Pages 64-66. In *The Charters and General Laws of the Colony and Province of Massachusetts Bay*. T. B. Wait and Co., Boston.

OTHER SOURCES

In addition to the references cited in the text, the authors consulted the following sources for further reading on laws, fences, stone walls and fence viewers:

Dane, N. 1824. *A General Abridgement, Digest of American Law, With Occasional Notes and Comments*. Cummings, Hilliard and Co., Boston.

Thorson, Robert. M. 2002. *Stone by Stone, The Magnificent History in New England Stone Walls*. Walker and Company, New York. 287 pages.

Viner, C. 1893. 2nd Ed. *A General Abridgement of Law and Equity, Alphabetically Digested Under Proper Titles; With Notes and References to the Whole*. London. Printed

for G. G. J. Robinson, T. Payne, E. and R. Brooke, T. Whieldon and J. Butterworth and
L. White, Dublin.

APPENDIX – SUGGESTED FORMS FOR USE BY FENCE VIEWERS

Request for Action by Fence Viewers

Applicant

Name _____
Address _____
Telephone _____ E-Mail _____ Fax _____

Location of Fencing Problem (Attach a sketch map showing the Assessor's Map and Lot numbers of the adjoining lands, if known.)

Adjoining Owner

Name _____
Address _____
Telephone _____ E-Mail _____ Fax _____

Is the fence located fully or in part on a property line? Yes _____ No _____ (Check one)

Fence viewers can only act on the specific issues stated in an application. For this reason, please describe in detail the fencing problem that you wish resolved. Indicate whether it is the location, height, need of repair, need for a new fence, or other specific issue. Additional sheets may be attached. (If additional issues are discovered in the course of the viewing they may have to be addressed in an additional application.)

Please state what action you believe will resolve this problem.

Signature of Applicant

Date

Report of Fence Viewers' Decision

Following proper notice to all parties concerned, the Fence Viewers of the town of _____ held a public meeting on _____ (date) at _____(time) at _____(location) and made the following decisions:

These decisions are in response to a request from _____ for action by the Fence Viewers. A copy of the application, stating the problem, is attached. The Fence Viewers, after proper notification to the adjoining owners, held a viewing at the location of the problem on _____ at _____.
Date Time

The following Fence Viewers participated in the viewing:

_____ Date _____
_____ Date _____
_____ Date _____

The following Owners and others participated in the viewing:

It was determined that the fence viewed is in the Town of _____. The Fence Viewers decided that the fence or proposed fence is ___ is not ___ a partition fence separating adjoining lands owned by different persons. (If the decision was negative, no further action was taken.)

The Fence Viewers decided that a fence is ___ is not ___ necessary at this site. (If the decision was negative, no further action was taken.)

Having decided that a fence was needed, the Fence Viewers give the following reason:

The Fence Viewers have examined the existing fence and have decided that the following portions must be erected, re-built, repaired and maintained. The responsibility of each owner is indicated (a map and additional sheets may be attached):

Action Required	Responsible Owner
_____	_____
_____	_____
_____	_____

The Fence Viewers have decided that the costs of the work to be done are to be shared as follows:

In arriving at the cost sharing, the Fence Viewers have used the following basis:

All work must be completed by _____.
Date

Signed:

Fence Viewers of the Town of _____ (Date)

NOTE: The party requesting this action must file this decision with the Town Clerk and pay the required fees.

I certify that this decision was filed on _____ (Date) and the required fees paid.

Town Clerk