

Line Fences Act Office Consolidation

This booklet has been prepared as only a guide to the provisions of the Line Fences Act. For accuracy, reference should be made to Act itself.

The Line Fences Act

Introduction

The Line Fences Act is the provincial law applicable to line fences. A line fence is a fence that marks the boundary between an owner's land and an abutting owner's land. Under this Act, an owner may construct, reconstruct or maintain a line fence.

It is unnecessary to request the attendance of fence-viewers if all the parties can agree on the construction, reconstruction or maintenance of a fence. However it is advisable to enter into a written agreement with your neighbour(s) outlining the type of fence, its location, costs and how the costs will be shared.

Therefore, before a line fence arbitration is initiated, the landowner seeking the arbitration must have contacted his or her neighbour(s) to attempt to reach an agreement.

If you cannot agree with your neighbour(s) about the construction, maintenance or reconstruction of the line fence, you may request fence-viewers to adjudicate on the matter. Three fence-viewers must attend each arbitration. The fee for initiating the attendance of the fence viewers is \$253.00.

The purpose of the Act is to provide a procedure for arbitrating a dispute between neighbouring landowners where one owner wants to construct, repair or maintain a fence on the common boundary, but is unable to reach agreement with the other owner(s) on:

- The type of fence to be erected, and/or
- The sharing of the costs of a fence.

NOTE: Fence-viewers can only resolve disputes concerning construction of the fence provided work has not commenced.

How is the Procedure Initiated?

Where two or more owners are unable to reach an agreement on the construction, reconstruction, repair or maintenance of a line fence, any one of the owners may initiate the arbitration procedure by applying and filing the required forms at the Town Clerk's Department. Only the owner of the land is eligible to apply.

Before applying, the owner wishing to initiate the arbitration should:

1. Make every possible effort to reach an agreement with the other owner(s).
2. Ensure that the boundary line in question is not in dispute (if it is in dispute, the arbitration procedure cannot proceed).

When the Town Clerk receives an application from a landowner, a date and time of a hearing for the arbitration will be set. This hearing must be held not more than 30 days from the date the request for arbitration was filed with the Town Clerk.

The Town Clerk notifies the owners and three fence-viewers of the date and time of the hearing for the arbitration, at least one full week in advance of the hearing.

NOTE: Where an occupant who is not the owner of the land is served a notice under the Act, it is the occupant's responsibility to inform the owner about the notice. If the occupant does not notify the owner, the occupant is liable for any costs of damages that may be awarded against the owner by the fence-viewers.

How a Decision is Made?

At the hearing, the three fence-viewers examine the land and hear from owners and their witnesses, if any. They also consider circumstances such as:

- The suitability of the fence to the needs of each owner.
- The nature of the terrain where the fence is to be located.
- The nature of the fences in the surrounding area.
- The benefit to each owner of having the boundary marked by a fence.
- Any other factors that they consider relevant.

The fence-viewers then make an award specifying either, that each owner shall construct, maintain and repair a portion of the fence, or that one owner shall construct, maintain and repair the entire fence, with the other owner paying his/her share of the costs incurred in doing the work.

If the fence-viewers consider an equal division of responsibility or costs to be unjust in the circumstances, they may make a division that they consider to be more appropriate.

The Town requires that the owner responsible for constructing the fence (initiating the arbitration is responsible) to obtain three written quotes, based on the fence-viewers Award, with the lowest quote being used to establish the fencing costs to be shared.

Where the terrain permits, the fence will be located on the boundary line between the two properties. Where in the opinion of the fence-viewers the local terrain makes it impractical to locate the fence on the property line, the award may specify a location wholly or in part on the land of either of the owners where it seems most convenient. In such a case, the location of the fence will not affect the title to the land.

The fence-viewers' Award describes the fence to be built, including a description of the materials to be used.

The Award establishes a date by which the work must be commenced and completed. It also specifies how the costs of holding the arbitration hearing are to be divided between the owners.

If any owner is dissatisfied with the Award, he or she has the right to appeal it within fifteen days of receiving a certified copy of the award from the Town. The owner appealing the Award is required to serve a Notice of Appeal in the prescribed form on the other owner(s) and to file a copy of the notice, together with an Affidavit of Service and a fee of \$329.00 payable to the Minister of Finance, with the Town Clerk. The appeal is then heard in the Council Chambers of the Town offices by a provincially-appointed referee, whose decision is final.

How can the Award be Enforced?

If one owner (Owner 'B') does not do the work specified in the fence-viewers' Award, the other owner (Owner 'A') may, after giving Owner 'B' two weeks notice, do or complete the work. Owner 'A' is entitled to enter onto the property of Owner 'B' to the extent necessary to do the work. The Act makes it an offence for Owner 'B' to obstruct Owner 'A' from entering the property for this purpose.

A different process applies in cases where both Owner 'A' and Owner 'B' do the work specified in the fence-viewers' award, but Owner 'A' thinks the work done by Owner 'B' does not comply with the Award.

In this situation Owner 'A', after giving Owner 'B' two weeks notice, may have the Town Clerk reconvene the fence-viewers to determine whether the work done by Owner 'B' complies with the Award. If the fence-viewers decide that the work

does not comply, they will then direct Owner 'B' to take the appropriate action by a certain date to achieve compliance.

How can the Award be Enforced? (Continued)

If Owner 'B' does not obey the fence-viewers' directions, Owner 'A' may then after giving Owner 'B' a further two weeks notice, do or complete the work. Owner 'A' may wish to take photographs of the uncompleted work before completing the fence. Such evidence will assist in recovering the cost of the work.

How can Owner 'A' Recover his or her Money?

Once Owner 'A' has done or completed the work in either of the above situations, he or she may then have the Town Clerk reconvene the fence-viewers to review the completed work. The cost of the re-attendance of the fence-viewers will be borne by one of the owners, or divided equally among the owners, as determined by the fence-viewers.

The process is somewhat different where an Award requires Owner 'A' to construct or repair the entire fence, with Owner 'B' paying a portion of the cost of the work to Owner 'A' by a specific date. If Owner 'B' fails to pay this amount, Owner 'A' may, after giving 28 days notice to Owner 'B', have to Town Clerk reconvene the fence-viewers to review the completed work.

In both situations, the fence-viewers re-attend the property to examine the work done by Owner 'A' and, if satisfied, prepare a Certificate certifying Owner 'B's' default and certifying the amount of money owed by Owner 'B' to Owner 'A'.

Owner 'A' can then recover this amount by depositing the Certificate with the Town Clerk. The Town Clerk places the amount on the tax collector's roll, which is collected from Owner 'B' in the same manner as municipal taxes, with interest.

Owner 'A' receives the amount, plus interest, when Owner 'B' pays the municipal taxes.

Alternatively, Owner 'A' may recover the amount by filing a certified copy of the Certificate and Award with the Clerk of the Small Claims Court. When filed, the amount may then be levied against goods, chattels and land of Owner 'B' in the same manner as the amount of a judgment of a Small Claims Court is levied under the Small Claims Court Act.

Can an Award be Registered on Title?

An owner may register a certified copy of the fence-viewers' Award or Certificate in the proper land registry office. The Award and Certificate then become

charges upon the land. An agreement between two or more owners concerning the sharing of the costs of a fence may also be registered and enforced as if it were a fence-viewer's Award.

Additional Information

If you would like more information, please contact Kelly Withers at the Clerk's Department.

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To obtain further information on the Line Fences Act visit www.gov.on.ca