

State of South Dakota

NINETY-THIRD SESSION
LEGISLATIVE ASSEMBLY, 2018

592Z0240

HOUSE BILL NO. 1139

Introduced by: Representatives Marty, Bartling, Brunner, Campbell, DiSanto, Frye-Mueller, Goodwin, Gosch, Jensen (Kevin), Kaiser, Lesmeister, Livermont, May, McCleerey, Schaefer, and Wiese and Senators Maher, Frerichs, Jensen (Phil), and Youngberg

1 FOR AN ACT ENTITLED, An Act to revise the applicability of adverse possession to certain
2 partition fences.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 15-3 be amended by adding a NEW SECTION to read:

5 Adjacent landowners in an unincorporated area of the state may agree to waive the
6 provisions of this chapter. The agreement may, but need not, be in the following form:

7 This document prepared by:

8 Name: _____

9 Address: _____

10 _____

11 Telephone: _____

12 PARTITION FENCE AGREEMENT

13 This Agreement is made this _____ day of _____, 20 _____.

14 WHEREAS, _____, and _____



1 is/are the owner(s) of certain real property described as follows:

2 _____
3 _____
4 _____

5 designated hereafter as "Tract A"; and

6 WHEREAS, _____, and _____

7 is/are the owner(s) of real property adjoining the above-described property and described as
8 follows: _____

9 _____
10 _____

11 designated hereafter as "Tract B"; and

12 WHEREAS, there is a partition fence separating the property described above.

13 NOW, THEREFORE, it is hereby agreed as follows:

14 The partition fence separating Tract A and Tract B is for the mutual convenience of the
15 owners. The partition fence does not necessarily reflect the actual or true boundary line
16 separating Tract A and Tract B. The partition fence is placed and constructed to accommodate
17 surface terrain rather than identify the actual legal property lines. To the extent that the partition
18 fence deviates from the legal property line, the owners agree that neither holds the possession
19 adversely to the other as contemplated in South Dakota Codified Laws chapter 15-3. Due to the
20 cost of replacing and repositioning the partition fence, neither the owner of Tract A or the owner
21 of Tract B at this time desires to do so.

22 Nothing in this agreement restricts the right of the owner of either tract in the future, to
23 exercise the right to have the partition fence repaired or repositioned upon the legal property
24 line. Ownership and right of possession of the real property and the real estate tax attendant to

1 Owners of Tract B above described, known to me or satisfactorily proven to be the person(s)
 2 whose names are subscribed to the within instrument and acknowledged that they executed the
 3 same for the purposes therein contained.

4 IN WITNESS WHEREOF, I hereunto set my hand and official seal.

5 _____

6 Notary Public, South Dakota

7 My commission expires: _____

8 Notary Printed Name: _____

9 Section 2. That chapter 15-3 be amended by adding a NEW SECTION to read:

10 Upon a judicial determination of adverse possession or notice from an adjacent landowner
 11 that the adjacent landowner will assert adverse possession based upon the location of a partition
 12 fence in existence for more than twenty years, the adjacent landowner acquiring the ownership
 13 and right to possession pursuant to this chapter becomes immediately liable for all future real
 14 estate taxes on the property. The previous owner may petition a circuit court to determine the
 15 precise acreage for which responsibility for real property taxes is transferred. The circuit court
 16 may assess reasonable costs including the cost of surveying the property.