

AN ACT

ENTITLED, An Act to revise the applicability of adverse possession to certain partition fences.

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

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

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

This document prepared by:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_

**PARTITION FENCE AGREEMENT**

This Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_\_.

WHEREAS, \_\_\_\_\_, and \_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

designated hereafter as "Tract A"; and

WHEREAS, \_\_\_\_\_, and \_\_\_\_\_

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

designated hereafter as "Tract B"; and

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

NOW, THEREFORE, it is hereby agreed as follows:

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

Nothing in this agreement restricts the right of the owner of either tract in the future, to exercise the right to have the partition fence repaired or repositioned upon the legal property line. Ownership and right of possession of the real property and the real estate tax attendant to the real property are governed by the records in the Register of Deeds for \_\_\_\_\_ County.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_

Owner, Tract A

Owner, Tract A

County of \_\_\_\_\_

State of \_\_\_\_\_

On this \_\_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, before me, the undersigned officer, personally appeared \_\_\_\_\_ and \_\_\_\_\_, Owners of Tract A above described, known to me or satisfactorily proven to be the person(s) whose names are subscribed to the within instrument and acknowledged that they executed the same for the purposes therein contained.

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

\_\_\_\_\_

Notary Public, South Dakota

My commission expires: \_\_\_\_\_

Notary Printed Name: \_\_\_\_\_

Dated this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_

\_\_\_\_\_

Owner, Tract B

Owner, Tract B

County of \_\_\_\_\_

State of \_\_\_\_\_

On this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_, before me, the undersigned officer, personally appeared

\_\_\_\_\_ and \_\_\_\_\_, Owners of Tract B

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

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

\_\_\_\_\_

Notary Public, South Dakota

My commission expires: \_\_\_\_\_

Notary Printed Name: \_\_\_\_\_

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

Upon a judicial determination of adverse possession the adjacent landowner acquiring the ownership and right to possession pursuant to this chapter becomes immediately liable for all future real estate taxes on the property. The previous owner may petition a circuit court to determine the

precise acreage for which responsibility for real property taxes is transferred. The circuit court may assess reasonable costs including the cost of surveying the property.

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

No agreement or judicial determination of adverse possession shall affect existing utility lines.

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I certify that the attached Act  
originated in the

HOUSE as Bill No. 1139

\_\_\_\_\_  
Chief Clerk

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\_\_\_\_\_  
Speaker of the House

Attest:

\_\_\_\_\_  
Chief Clerk

\_\_\_\_\_  
President of the Senate

Attest:

\_\_\_\_\_  
Secretary of the Senate

House Bill No. 1139

File No. \_\_\_\_\_

Chapter No. \_\_\_\_\_

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Received at this Executive Office  
this \_\_\_\_\_ day of \_\_\_\_\_ ,

20\_\_\_\_ at \_\_\_\_\_ M.

By \_\_\_\_\_  
for the Governor

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The attached Act is hereby  
approved this \_\_\_\_\_ day of  
\_\_\_\_\_, A.D., 20\_\_\_\_

\_\_\_\_\_  
Governor

=====

STATE OF SOUTH DAKOTA,  
ss.

Office of the Secretary of State

Filed \_\_\_\_\_, 20\_\_\_\_  
at \_\_\_\_\_ o'clock \_\_ M.

\_\_\_\_\_  
Secretary of State

By \_\_\_\_\_  
Asst. Secretary of State