

Iowa FENCE LAW

Disputes regarding fences probably go back to the first farmers and ranchers, or perhaps the first neighbors. To help settle fencing disputes, Iowa has developed a number of laws that regulate the rights and duties of landowners in relation to fences.

Below are questions that commonly arise in relation to fences.

What Rules Govern Responsibilities for Fence Maintenance?

Contracts. You can enter an agreement with your neighbors that will establish the responsibilities of each party in relation to a fence.

These are commonly referred to as fencing agreements. It also means that if you have a disagreement with a neighbor, one of the first things to check is whether there is an agreement already in place.

Easements. You can record fence agreements in the county clerk's office. Once recorded, the contract becomes an easement that will bind future owners. An easement is the right to use land owned by another for a specific limited purpose. This

means when you sell the land or otherwise transfer ownership, the new owners have to follow the agreement.

Easements can also be created simply by using the land in a particular way for a set amount of time. This is called an "easement by prescription" and is discussed in further detail below.

Iowa Law. Iowa's statutes and court cases have established rules regulating the rights and duties of neighboring landowners. These laws only apply if no prior fencing contract or easement is in place. It

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also only applies to partition fences, which are fences between two properties.

Can someone force their neighbor to erect or maintain a fence?

If a neighbor decides to construct a partition fence between two properties, they can send a written request to an adjacent landowner. Once the request is sent, the neighbor has a legal duty to contribute to the construction and maintenance of the fence.

Additional Resources

Drake Agricultural Law Center
www.law.drake.edu/agLaw
Phone: 515-271-2205

Iowa Concern Hotline:
www.extension.iastate.edu/iowaconcern/
Phone: 1-800 447-1985

ISU Center for Agricultural Law and Taxation:

www.calt.iastate.edu
Phone: 515-294-5217

A Landowner's Guide to Wildlife Friendly Fences:

<ftp://ftp-fc.sc.egov.usda.gov/IA/technical/FencingWildlife.pdf>



✘ www.WFAN.org ✘

How are disagreements over fences settled?

If neighbors cannot reach an agreement, fence viewers are called upon to settle the dispute. In Iowa, fence viewers are the County Board of Supervisors. Their job is to divide the responsibilities for the fence equally between the neighbors. Fence viewers customarily use the right hand rule for establishing duties.

What is the Right Hand Rule?

Under this rule, the landowners meet at the middle point of the partition fence and face one another standing on their respective properties. Each party is then responsible for the portion of the fence on their right hand side. Agreements should be considered that compensate for obstacles, such as waterways, that may result in additional maintenance costs for one landowner.

How are fences used to settle boundary disputes?

There are primarily two ways fences can be used to settle a boundary dispute.

A prescriptive easement may be established merely through the existence of a fence for a set amount of time. In Iowa, there are four elements that must be satisfied to establish an easement by prescription.

1. The fence must be misplaced for a period of 10 years or more,
2. The landowners know where the true boundary is,
3. The land is used in a manner that is consistent for the type of property, such as raising livestock on pasture land, and
4. The benefiting landowner uses the property continuously and uninterrupted.

Acquiescence is a similar legal concept whereby a misplaced fence can become the legal boundary line between two properties. Under acquiescence the

adjoining owners mistakenly believe that the fence actually is on the boundary between the two properties, and they use their respective properties under this mistaken assumption for a period of 10 years. Once the period has passed, regardless of subsequent surveys showing otherwise, the fence acts as the legal boundary.



Who is liable for damage resulting from a negligently maintained fence?

Iowa is a Fence In/Fence Out state. This means that livestock owners have a duty to fence their animals in, and neighboring landowners also have a duty to fence livestock out. Basically, a

livestock owner is responsible for damage caused by the animals, if the animals escape because the livestock owner did not maintain their portion of the fence. On the other hand, a livestock owner is not liable for damage caused by livestock, if they escaped because the harmed neighbor failed to maintain their portion of the fence.

It's important to note that this applies to damage to third parties as well. A landowner without any livestock of their own may be held accountable for damage to third parties, if livestock escape because they failed to maintain their portion of a partition fence.

Who is responsible for fences on leased land?

Maintenance for fences between landowners and tenants should be established in the lease contract. Landowners *may* be held liable for a tenant's livestock due to negligently maintained fences. An indemnity clause in a lease can help ensure the tenant defends against such suits and pays for any damages that are caused by escaped livestock.

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