

Nebraska FENCE LAW

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

Below are questions that commonly arise.

What Rules Govern Responsibilities for Fence Maintenance?

Contracts. You can enter an agreement with your neighbors that 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, 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.

Nebraska Law. Nebraska's statutes and court cases have established rules regulating the rights and duties of neighboring landowners. Nebraska fencing law has recently undergone some changes, so its

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important to have the most up to date information.

Again, these laws only apply if no prior fencing contract or easement is in place. It also only applies to partition fences, which are fences between two properties.

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

Yes. Nebraska is now a fence in/fence out state. If a neighbor decides to construct a partition fence between two

Additional Resources

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

Farm Mediation Services:
www.agr.ne.gov/mediation/index.html
Phone: 800-464-0258

Mediation of Fence Disputes:
www.supremecourt.ne.gov/5528/mediation-fence-disputes
Phone: 800-446-4071

A Landowner's Guide to Wildlife Friendly Fences:
<ftp://ftp-fc.sc.egov.usda.gov/IA/technical/FencingWildlife.pdf>



✘ www.WFAN.org ✘

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.

Nebraska law requires adjoining landowners to construct and maintain a “just proportion” of a division fence. This means simply an equal allocation of the responsibility for construction and maintenance or an equal contribution of the share of the cost of construction and maintenance.

How are disagreements over fences settled?

If a neighbor does not respond to the written notice requesting contribution to the fence within seven days, the requestor can file an action in the county court. Fence viewers are no longer used in Nebraska. If the landowners cannot reach an agreement on the just proportion each is to contribute, either may file a fence dispute action in the county court.

Mediation is also available, if both parties agree to it. Mediation can help avoid expensive court battles. The Nebraska Department of Agriculture provides information on farm mediation services.

What is a “lawful fence?”

Unless agreed otherwise by the landowners, the fence shall be a “lawful fence.” Nebraska’s statutes, in Section 34-115, provide a standard for each type of fencing material used. For wire fences, there must be at least four wires, of a size not less than number nine fencing wire, and attached to posts not more than one rod’s distance from one another.

How are fences used to settle boundary disputes?

Nebraska adheres to “recognition and acquiescence” as a means for determining boundary disputes. This is a legal concept whereby a misplaced fence can become the legal boundary line between two properties. Under

acquiescence the adjoining owners recognize that the fence acts as the boundary between the two properties, and they use their respective properties under this recognition 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?

Nebraska is now 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 necessarily 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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