

OHIO LINE FENCE LAW
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Line fence questions are quite varied throughout Ohio. For many farmers the utility of a partition (line) fence has decreased because of changes in, or ceasing of, their livestock operations. This, as well as increased costs of fence construction and maintenance, has resulted in a reluctance on the part of many landowners to bear the expenses of a partition fence. However, line fences are still very important to many farmers who pasture livestock.

Landowner's Duty to Construct and Maintain a Partition Fence

Livestock owners and their neighbors often have questions about their responsibility for the construction and maintenance of fences separating their property.

Chapter 971 of the Ohio Revised Code (ORC) and related court decisions govern the construction and maintenance of partition fences and watergates in Ohio.

Section 971.02 ORC provides in part that, "the owners of adjoining land shall build, keep up, and maintain in good repair, in equal shares, all partition fences between them, unless otherwise agreed upon by them in writing and witnessed by two persons." The fact that any land or tract of land is wholly unenclosed or is not used, adapted, or intended by its owner for use for agricultural purposes shall not excuse the owner thereof from the obligations imposed by sections 971.01 to 971.37 of the Revised Code.

Generally, a landowner must construct and maintain an equal share of a partition fence if his neighbor requests it of him. It doesn't matter whether he uses the property for agricultural purposes or that the property will not be fully enclosed as a result of building the fence. For example, a person using his land solely for residential purposes could be required to help build and maintain a partition fence.

In general, if a landowner neglects his duty to keep his share of a partition fence in the condition that an ordinary person would, he is liable for damages caused by trespassing animals. More specifically, if the owner of livestock fails to keep up his portion of a partition fence he would be liable to his neighbor or to other parties for damages caused by his trespassing livestock. Also, a person failing to keep up his portion of the fence thus permitting the neighbor's livestock to get out through that portion can not collect for damages caused on his property and may be liable to other parties for damage caused by the trespassing animals.

Exceptions to Landowner Duty

There are four and possibly five exceptions to this general requirement of sharing equally in the cost and construction of a partition fence. First, adjoining property owners may

agree to any apportionment of costs and construction. Such an agreement must be in writing, signed, and witnessed by two persons.

Secondly, a landowner may avoid the expense of construction and maintenance entirely if he can prove that the cost of the fence is greater than the benefit that he would derive from it. The benefit is measured by the difference between the value of his land before and after the construction of the fence. It has been held that the owner of land used solely as a grain farm benefited sufficiently to require him to pay for his portion of a partition fence. Protection of property and reduced costs of fully enclosing a parcel of land in the future are considered as benefits. Ohio courts have held that the owner need not incur the expense of a portion of a fence on wild and unused land which was expected to remain so, however, this argument is seldom successful.

Another exception is if land borders a railroad, the railroad must pay the full cost of building and maintaining the partition fence (ORC 4959.02).

The fourth exception relates to land within municipal corporations or land outside of municipalities which has been subdivided into lots. The owners of property located entirely within a municipality never have to share the cost of a partition fence with the adjoining owner even if the adjoining owner's property is located outside of the municipality. The owners of platted rural lots do not have to share the costs of partition fences when the adjoining land is a lot, if the adjoining land is not a lot, for example, a farm, the owner has an obligation to share in the cost of the fence.

The possible fifth exception is when the adjoining land is a limited access highway or is owned by the Federal Government. The U. S. Secretary of Agriculture is authorized to pay for any part of the leasing, seeding, and protective fencing of public range land, and privately owned land intermingled with or adjacent to national forest land (16 United States Code Service (USCS) 580 f). This seems to imply that the government is required to erect and to maintain any fence which it seems necessary to construct.

A private landowner must act cautiously when building a fence adjacent to publicly owned land. The government is entitled to damages for any unlawful enclosure, even if such enclosure involves no destruction to government property and the government would not have derived any benefit from the land if it had not been enclosed (43 USCS 1062). Thus, when determining whether or how to build a fence alongside of government land, it is advisable to consult with the proper authorities.

Fences along limited access highways are constructed and maintained by the Ohio Department of Transportation (ODOT) in rural areas. It is unlawful to cut, remove, or destroy any fence erected to prevent traffic from entering or leaving a limited access highway without the permission of the Director of Transportation, except in a case of emergency where life or property is in danger (ORC 3767.201). The policy adopted by the ODOT is that a right of way fence is provided for traffic safety, but adjoining property owners are permitted to modify such fences to keep animals in. For example, a landowner may put a strand of barbed wire across the top of a highway fence to contain

cattle or other livestock. It is important to note, however, that it is the owner's responsibility to keep his animals confined. Thus, if livestock enter a limited highway, the owner is liable for damages even though the fence was constructed by the ODOT. The responsibility of constructing and maintaining fences along nonlimited access roads is on the abutting landowner.

Properties Divided by a Stream

If the division of adjoining property is a stream and it is impractical to construct and maintain a partition fence therein, the township trustees, upon request, must assign each landowner a portion of fence to be constructed on his own land along the bank of the stream. The fences running along the bank are to be connected by a fence or watergate (ORC 971.14).

When the division line crosses a stream through which it is impractical to construct and maintain a partition fence, a watergate sufficient to turn livestock is to be constructed and maintained in equal shares by the adjoining landowners unless they agree otherwise. Such an agreement must be in writing and witnessed by two persons to be enforceable (ORC 971.24).

Considerations for Construction, Upkeep Or Removal of Partition Fences

Partition fences in Ohio need not be of any particular design or material. However, the fence may not be entirely constructed of barbed or electric wire unless the adjoining landowner consents in writing. One or two barbed wires on top of another type of fence may be used without the consent of the adjoining owner. In which case no barb is to be closer to the ground than 48 inches (ORC 971.03).

Live partition fences may be used if they are osage or blackthorn hedge. A live or hedge fence may not exceed a height or width of six feet for a period longer than six months (ORC 971.28).

A landowner must cut all brush, briars, thistles and other noxious weeds on his property within four feet of a partition fence and within fence corners. However, a landowner may plant vines and trees for use along the partition fence (ORC 971.33).

Removal of partition fences for reasons other than building a new fence should only be done with the approval of the abutting landowner. Two Ohio court cases have enjoined or prevented the removal of the partition fence when the landowners did not come to an agreement.

Settling Disputes Between Adjoining Landowners

If a dispute arises over the responsibility of constructing or maintaining a partition fence or Watergate, the aggrieved party may request the township trustees to settle it. Under 971.04 ORC, the trustees must view the fence site after giving all adjoining

landowners at least 10 days notice of the viewing. After the viewing, the trustees assign each owner's share of the fence in writing. The writing is recorded in the Partition Fence Record in the county recorder's office. The assignment is effective between the owners and successive owners until it places an unequal burden on one of the parties due to the sale or other division of the land. The costs of assigning the owner's responsibilities must be borne equally by the owners. If the costs are not paid to the township clerk within 30 days of the assignment, the clerk certifies the costs to the county auditor. The auditor then places the costs on the tax duplicate of the property and the costs are collected like other taxes (ORC 971.04 and 971.06).

If either party fails to comply with the assignment, the aggrieved person may again seek the help of the trustees. The trustees are to contract out the work to the lowest bidder after advertising the specifications for the fence and awaiting bids for a period of 10 days. If no bids are received from a responsible bidder, the trustees must construct or repair the fence. If the cost is not paid to the township clerk within 30 days of certification by the trustees, the clerk certifies the costs to the auditor. Those costs are then placed on the tax duplicate and become a lien on the property. The costs are collected like other taxes and in anticipation of such collection the auditor provides payment from the county treasury to the persons, including the trustees and county clerk, who were involved in the process (ORC 971.08 and 971.09).

If a landowner or a tenant does not cut noxious weeds along his side of a partition fence or in fence corners within 10 days of being requested to do so by an abutting occupant, that occupant may notify the township trustees. The trustees are to view the site and upon the finding of a valid complaint, enter a contract for cutting the weeds. Upon completion of the work, the trustees certify the cost to the county auditor who places the amount of the tax duplicate for collection (ORC 971.34 and 971.35).

Summary

Generally, adjoining property owners do have the responsibility of building an equal portion of a partition fence. This responsibility becomes important when one of the property owners wishes to pasture livestock. The quality of the fence to be built is not set forth in the Ohio Statutes, but the guide should be a fence which is adequate to turn livestock.

There is an old adage of building the right side of a partition fence as the fence is faced by a landowner standing on his own property. This is not a part of Ohio Law. However, this may be a method of deciding between neighbors which portion of the fence each is to build and repair.