

# Farm Management

## New law for shared fence



### Country Counsel

By ROBERT MOORE

**I**N 2008, Ohio enacted a new fence law that makes use of fence line affidavits to establish adjoining landowners' rights and obligations for shared fences. The purpose of the affidavits is to make a public record of these obligations so future disputes can be more easily resolved. An affidavit is a formal, sworn statement of fact signed by the person who makes the statement (referred to as the affiant) and witnessed and certified by a notary public. The fence line affidavit must be recorded in the county where the fence is located.

#### Types of affidavits

Several different types of affidavits can be used depending on the situation. There are several types of affidavits involved.

■ **Previously existing partition fence:** Under section 971.05 of the Ohio Revised Code, a landowner may establish that a line fence existed on a property division line within two years prior to filing the affidavit. A landowner must file this type of affidavit by Sept. 30,

#### Key Points

- New fence law requires landowners to take action to maintain fencing.
- Affidavits must be filed to help settle future disputes.
- Not following deadlines may cause forfeit of rights for legal recourse.

2009. This affidavit ensures that both landowners would be responsible in "equitable shares" for a replacement fence. Without an affidavit of previous fence or any evidence of a pre-existing line fence, the landowner who wants to construct a replacement fence on the property line would be entirely responsible for the fence.

■ **Removed partition fence:** A landowner who removes a fence may establish that a line fence existed on the property division line, but was removed and not replaced within one year of removal. The landowner must file this type of affidavit within one year of removal of the line fence. Provisions for this affidavit are in ORC 971.06. Note that a landowner who removes a line fence must also provide a 28-day notice of removal to adjoining landowners. With proper filing of an affidavit of removal and a 28-day notice of removal, the cost of a replacement fence would be shared "equitably" between the land-

owners. Failure by the owner who removed the fence to provide the 28-day notice and file the affidavit will exempt the adjoining landowner from any costs or responsibilities for a replacement line fence.

■ **Partition fence costs:** If a landowner pays for the construction and maintenance of a new line fence built after Sept. 30, 2008, the landowner may file an affidavit specifying the costs incurred in building the fence, and may also file an affidavit each year setting forth annual maintenance costs for the line fence. The affidavits serve as evidence of the total cost of the fence, so the landowner may later seek reimbursement from an adjoining landowner who did not contribute to the fence but uses the fence to contain livestock within 30 years of its construction, according to ORC 971.07. A landowner must file this type of affidavit before seeking reimbursement for later use of the fence.

#### Requirements of affidavits

In addition to the information previously discussed, the fence line law requires that each affidavit contain the following information:

- ✓ A description of the land where the fence is located. This should be a "metes and bounds" legal description of the properties separated by the fence.
- ✓ A statement of the purposes and uses of the fence. Is the fence used for livestock, a boundary line, to prevent trespassing or some other purpose?

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#### Deadlines

The new fence line law contains several deadlines landowners must take into consideration. Failure to meet these deadlines may cause a landowner to forfeit his or her legal rights. The requirements are as follows:

- ✓ A landowner must file an Affidavit of Previously Existing Partition Fence by Sept. 30, 2009, and the affidavit must pertain to a line fence that existed within two years of the filing of the affidavit.
- ✓ A landowner who removes a line fence must file the Affidavit of Partition Fence Removal within one year of the date the fence was removed.
- ✓ A landowner seeking reimbursement on a line fence from a neighbor who later uses the fence to keep livestock must first have filed an Affidavit of Partition Fence Costs.

For more information, the Agricultural and Resource Law Program at the Ohio State University has developed fact sheets on the new fence line law. Access this information at [www.aede.osu.edu/programs/aglaw](http://www.aede.osu.edu/programs/aglaw) or by e-mailing Peggy Hall at [aglaw@osu.edu](mailto:aglaw@osu.edu). For examples of fence line affidavits, visit the Wright Law Co. Web site at [www.wright-law.net](http://www.wright-law.net).

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## Agriculture still at risk for economic difficulty

**A**GRICULTURE isn't insulated from the rest of the U.S. economy, points out Neil Harl, a longtime Iowa State University professor of economics and farm policy.

True, the global financial difficulties that have caused severe heartburn for financial institutions and the collapse of big banks on Wall Street this past year have largely bypassed the ag sector. "However, it is clear that the longer the global economic meltdown persists, the more serious and far-reaching the effects are likely to be on farming, ranching and rural areas," Harl says.

If investor confidence isn't soon restored, credit availability could pose a big problem for production credit, land purchases and trade in ag products, and world demand for ag products would likely decline further.

Moreover, rural areas have suffered layoffs with overall rising unemployment, stock market losses and reduced discretionary spending, besides the long-term adjustments that have been

ongoing for decades. "These effects seem likely to continue for the next several quarters and, in some instances, beyond," says Harl. "Farming, particularly crop farming, has fared relatively better than livestock farming in recent months, but storm signals are flying for crop production."

— Rod Swoboda

#### He said it

"The economic state of the ag sector — both farms and rural areas generally — depends heavily on whether the world economy continues to decline. If confidence isn't restored and financial systems continue to deteriorate, the ag sector will suffer widely. The success of the stimulus packages and efforts to stabilize financial institutions are vitally important to the ag sector."



**Neil Harl,**  
ISU economist