

IOWA FENCE LAW

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OVERVIEW

- Issues involving partition fences are the cause of many disputes between Iowa landowners
 - Partition Fences mark property boundaries between adjacent landowners
 - Iowa has numerous statutes which govern fencing matters

PARTITION FENCES

Is there a duty to erect and maintain fences?

- In Iowa, a landowner does not have a legal duty to build a partition fence
 - One exception: Iowa Code 169C.6
- However, a landowner can be compelled to contribute to the creation or maintenance of a partition fence upon the written request of an adjacent owner (Iowa Code 359A.1A)

COMPELLING A LANDOWNER TO CONTRIBUTE

- A landowner can also be compelled to build or maintain a partition fence on the basis of an agreement- such as the utilization of the "right-hand rule"
 - What is the "right-hand rule"?: An informal arrangement by which the landowners face one another at the mid-point of the fence and agree to maintain their share of the fence to their respective right-hand sides

WRITTEN FENCE AGREEMENTS

- For an agreement that details the allocation of fence maintenance and/or construction, two options exist:
 1. Adjacent owners can enter into a written agreement, or
 2. Adjacent owners can request an order from the fence-viewers (township trustees) allocating responsibility between the parties

WHY DRAFT A WRITTEN AGREEMENT?

- Iowa law does allow owners of adjoining parcels to file an agreement with the county recorder of deeds to make an agreement binding
 - Upon recordation, the agreement is binding upon the original parties, their heirs and subsequent owners
 - If adjacent owners can't come to a mutual agreement, the fence viewers can be called upon to settle the dispute

TOWNSHIP TRUSTEE DUTIES

- ◉ Township trustees are elected and are authorized by state law to act as township trustees to :
 - Decide partition fence controversies, and
 - Render opinions that will be binding upon current and subsequent owners

FENCE DISPUTE RESOLUTION PROCESS

- ◉ If the statutory process is invoked, a four step process is involved:
 - Step One: the complaining landowner must make a written request to the other landowner for the erection of a fence
 - Step Two: if Step One doesn't resolve the matter, the complaining landowner must make a formal request to the township trustees to resolve the dispute

STATUTORY PROCESS (CONT'D)

- ◉ Step Three: the trustees must give five days written notice to all adjoining landowners that are liable for the erection or maintenance of the partition fence concerning time and place of the hearing
- ◉ Step Four: the fence viewers meet and issue a written order that allocates responsibility for maintenance or erection of the partition fence

HOW IS RESPONSIBILITY DIVIDED?

- ◉ Fence Viewers are to divide responsibility for building and maintaining partition fences equally between the parties regardless of which party gains primary benefit from the fence construction
 - The decision of the fence viewers is binding
 - ◉ However, a landowner can appeal to the local district court by filing a notice of appeal within 20 days after the fence viewers decision, and filing an appeal bond

LANDOWNER'S DUTIES

Absent an appeal, landowners must construct or maintain their assigned portion of fence as decided by the fence viewers

- ◉ If a party fails to comply, the disaffected landowners can request that the fence viewers build or maintain the fence
 - But, the parties requesting the work must pay a deposit to cover the expenses to be reimbursed upon collection from the defaulting party
 - If payment is not made, the amount will be assessed as property taxes on the disputed property

WHAT KIND OF FENCE CAN BE REQUIRED?

Iowa law generally requires the erection of a "legal" fence.

- ◉ What qualifies as legal?
 - Most common- three barbed wires
 - Rails and boards may also be used
 - If a landowner pastures sheep or swine, a fence can also be required to be "tight"
 - ◉ A "tight" fence requires the landowner to add woven wires to the partition fence

PARTITION FENCES AND LIVESTOCK OWNERS

A farmer has a responsibility to fence in their own livestock, as Iowa is a common-law, fence-in jurisdiction

- However, Iowa does follow a conditional fence-out theory:
 - If an animal escapes as a consequence of negligent fence maintenance by adjacent landowners, the neighboring landowner will not be able to recover damages to their property by the trespassing animal
 - Placing the duty on the non-livestock owner to maintain their portion, limits the overall reach of the fence-in theory

LIVESTOCK OWNER DUTIES

- They must fence and control animals under their care
 - An owner is liable for the damages caused by their trespassing animals, if the trespass is caused by the owner's own negligence
 - "Distrain" may also come into play: allows a person to take possession of trespassing livestock until the costs of "distrain" are paid (i.e. keeping and caring for the livestock and damage caused)

LIVESTOCK OWNER LIABILITY

An owner may be liable for damages to third parties, such as:

- Motorists who suffer harm from trespassing animals
 - There is a common-law duty in Iowa to prevent animals from entering a public roadway despite the fact the formal fence-in statute was repealed in 1994 (See *Klobnak v. Wildwood Hills, Inc.*, 688 N.W.2d 799)

DUTY OF CARE

- A livestock owner has a duty of ordinary care to prevent injuries and is liable to the extent that injuries were reasonably foreseeable
 - 2004 Iowa Supreme Court- a ranch failed to inspect fence and take necessary precautions to protect motorists from stray horses
 - Ranch argued that the statutory repeal of the fence-in requirement relieved them of this responsibility
 - Court disagreed, noting that the common law imposed a duty of reasonable care upon livestock owners to restrain livestock

ADDITIONAL RESPONSIBILITIES

- Adjacent landowners may also be liable if a trespass results from negligent maintenance of a partition fence
 - If no legal duty to construct a fence exists, adjacent landowners will not incur liability
 - If a legal duty exists from a written agreement or order of fence viewers, negligence by adjacent landowner can lead to liability for damage to third parties

ADDITIONAL RESPONSIBILITIES (CONT'D)

- If both parties fail to maintain a fence, resulting in third party injury, negligence will be a jury question
- In lease situations, Iowa courts have held that landlords bear no responsibility for damage caused by a tenant's livestock

IOWA'S "HABITUAL TRESPASS" STATUTE

- ◉ A "habitual trespass" occurs when livestock escape their enclosure at three times in a 12-month period and trespass onto the same neighboring landowner or the same public road each time
 - In that event, the local government may make a finding as to whether the trespass occurred
 - If so, the disaffected neighboring landowner can make written request of the livestock owner that they build a fence
 - If not built within 30 days of request, matter can be submitted to fence viewers
 - Neighboring landowner not liable to build fence

FENCE LOCATION

- ◉ What if a fence has been improperly located?
 - If fence has been treated as the boundary by the adjacent landowners there is a strong interest in allowing the fence to remain
 - Iowa law recognizes this concern and allows a misplaced fence to continue to serve as the legal boundary, irrespective of what a subsequent survey may indicate is the true boundary

"BOUNDARY BY ACQUIESCENCE"

- ◉ In Iowa, once a fence has been utilized as the boundary for a period of 10 years, the fence can establish the boundary even though a later survey indicates the fence is not on the surveyed line
 - Known as "boundary by acquiescence"
 - The adjacent owners didn't know where the true property line was, but simply acquiesced in the existing fence line as the actual boundary (by farming or grazing)

"BOUNDARY BY ACQUIESCENCE" (CONT'D)

- ◉ Once a court determines that, based on the evidence, the fence has been treated as a boundary for 10 years, the fence becomes the true boundary
 - Similar concept: a misplaced fence can become the true boundary via a prescriptive easement

WHAT IS A "PRESCRIPTIVE EASEMENT"?

- ◉ This type of easement can arise when the adjacent owners know where the true boundary is, know that the existing fence is not on the line, but continue to use the fence as the property line
 - In this situation, one adjacent owner is actually allowing the other to use some of their property that they wouldn't otherwise be able to use if the fence were in the correct location

ESTABLISHING A PRESCRIPTIVE EASEMENT

- ◉ The party that is benefitting from the misplaced fence can establish the easement by showing that:
 - They have *openly* and *notoriously* possessed the land;
 - *Adversely* under a claim of right, and;
 - Have had *continuous and exclusive* use for the statutory period (10 years)

OPEN AND NOTORIOUS POSSESSION

- ◉ Requires that a landowner have used the property in a similar fashion as the true owner
 - Established by acts such as improving or maintaining the land
 - That possession be adverse and under a claim means that the landowner has made an innocent mistake in locating the boundary and believed that the fence was on the proper location when erected

CONTINUOUS AND EXCLUSIVE USE

- ◉ Requires that a landowner's use has not interrupted by another party for the statutory period- 10 years
- ◉ Exclusive use not required, as "mere casual intrusion by others on the property" does not invalidate the continuity required for establishment
- ◉ If the elements are established, the fence will continue to serve as the border

CONSTITUTIONAL ISSUES

- ◉ Constitutionality of requiring a landowner to erect and maintain partition fences has been questioned in recent years
 - As society becomes more urban, the validity of fencing statutes will likely be challenged more frequently
 - Some states take the position that compelling a property owner that doesn't own livestock to contribute to building or maintenance is unconstitutional
 - ◉ 5th Amendment grounds as a taking of private property without "just compensation"

IOWA SUPREME COURT

- ◉ Court has held it constitutional to require landowners to share in the expense of creating a partition fence
 - In a 1995 case, an urban resident complained that requiring contribution for a fence that provided him no benefit was unconstitutional
 - Court disagreed- Iowa is an agricultural state and the burden on the non-livestock owner was minimal

CONCLUSION

- ◉ "Good Fences Make Good Neighbors"
 - To avoid fencing disputes, the best practice is to maintain communication with neighbors
 - Also helpful to have an understanding of Iowa law
 - Remember that potential conflicts can be resolved in advance through written fence agreements
 - ◉ If a writing doesn't work, the fence viewers may be called in
 - ◉ Regardless, fences will continue to aid the agricultural interest of Iowa for the foreseeable future

FARM LEASES

- ◉ Types of Farm Leases
 - **Written**
 - **Components of a Written Lease**
 - ◉ Signed by both parties
 - ◉ Definite period
 - ◉ Description of property
 - ◉ Kind and amount of rent, time and place of payment
 - **Benefits**
 - ◉ Definite lease terms
 - ◉ Less chance of disagreement and misunderstanding
 - ◉ Protects original parties and assignees and heirs
 - ◉ Remember: Pasture Leases treated the same now (over 40 acres) under Iowa law for lease termination

FARM LEASES

- ◉ Oral Leases
 - Mutual understanding
 - Similar components identified in a written lease agreement
 - Common in Iowa

LEASE TERMINATION

- ◉ September 1 is the annual notice deadline
- ◉ Termination of oral leases
 - General rule: 40 acres or more, tenancy continues beyond agreed term for following crop year on same terms and conditions as original lease
 - Exception 1: If written notice of termination is served on either party (March 1 termination)
 - Exception 2: If mutually acceptable to all parties, lease can be terminated or modified at any time

LEASE TERMINATION

- ◉ Termination of written leases
 - No need for notice of termination, if agreement (written or not) specifies termination date
 - Methods of termination (by September 1)
 - ◉ Personal delivery of written notice
 - ◉ Service by county sheriff
 - ◉ Publication
 - ◉ Mailing (service by certified mail)

LANDLORD'S LIEN

- ◉ Applies to cash or crop-share leases
- ◉ Tool for landlords
- ◉ Definition: lien on crops grown on premises and upon all other personal property which has been used or kept on the premises
- ◉ This type of lien takes priority over rights of purchaser of property subject to lien and over security interests held by lenders (landlord gets priority if they file a financing statement)
- ◉ Prevails against purchasers of commodities, even if not recorded

LENGTH OF LEASES IN IOWA

- ◉ Iowa Constitution limits length of lease agreements to 20 years
- ◉ Leases must be recorded if term is for five years or more

TAX CONSIDERATIONS AND FARM LEASES

- ◉ Often overlooked when negotiating a lease
- ◉ Important to consider the impact type of lease will have on estate, business planning, as well as tax implications

SELF-EMPLOYMENT TAX AND LEASES

- ⦿ Tax imposed on net earning derived from self-employment
- ⦿ Definition of income from self-employment: gross income derived by an individual from a trade or business that the taxpayer conducts
- ⦿ However, there are some exclusions from that calculation

EXCLUDED FROM SELF-EMPLOYMENT TAX

- ⦿ Rents from real estate and from personal property leased with real estate
- ⦿ Income from crop-share and/or livestock-share rental arrangements for landlords not “materially participating” in the farming operation
- ⦿ Income received under cash rental arrangements (unless the lessor leases land to an entity in which the lessor is materially participating)

“MATERIAL PARTICIPATION”

- ⦿ Test for material participation lease (if satisfied, rental income is self-employment income, thus subject to self-employment tax) :
 - Lease provides for material participation in the production or management of the production of ag products, and
 - Landlord does materially participate

Note: Ag program payments that are received under a crop-share or livestock share lease are considered to be self-employment income, if material participation by landlord

INCOME TAX AND LEASES

- ⦿ USDA cost-sharing payments
 - Under certain federal farm programs, USDA shares in the cost of compliance.
 - If a farmer satisfies certain requirements, the farmer can exclude cost-share payments from income (just for crop-share and livestock-share landlords)
- ⦿ Soil and water conservation expenses
 - Farmers may be able to deduct these expenses in the year incurred, if engaged in the farming business
- ⦿ Fertilizer and lime costs
 - May be deducted if engaged in business of farming
- ⦿ Interest

IOWA BEGINNING FARMER TAX CREDIT

- ⦿ Important consideration for negotiation of leases
- ⦿ 2007- new Iowa tax credit for landlords who lease ag assets to “beginning farmer” (no age requirement)
- ⦿ May entirely eliminate state income tax
- ⦿ Lease must be from two to five years, tenant must have net-worth of less than \$300,000
- ⦿ Amount of credit for landlord depends on type of lease
- ⦿ 5% of gross amount received for cash leases
- ⦿ 15% of gross under crop or livestock-share leases
 - Unused amount of credit can be carried forward