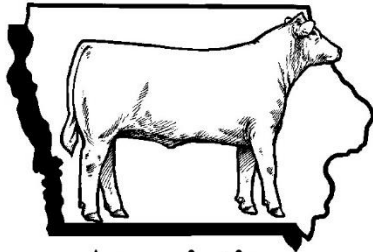


Iowa Cattlemen's



Association

Understanding the Iowa Fence Law

ICA Fact Sheet

June 2017

Iowa Fence Law – A Legacy

Most of Iowa's statutory fence law was established in the original Iowa Code of 1851 and has descended intact to the present date Iowa Code Ch. 359A. Issues often arise between land owners regarding partition fence and the responsibilities to erect, maintain, and repair fence. Understanding the Iowa fence law and the processes involved to develop a fencing agreement, is key to being an Iowa cattle producer.

Iowa Fence Law

- There is no legal duty to build a partition fence (*IA Code Ch. 359A.1A*).
 - However, a landowner can be required to contribute to the building and maintenance of a fence upon a written request from the adjacent landowner. (*IA code Ch. 359A.16*)
- Iowa operates both:
 - Fence-in Theory
 - If livestock trespass due to owner negligence of fence, the livestock owner may be liable:
 - To landowner for damages and maintenance costs caused by the trespassing livestock.
 - To a local authority for costs incurred by livestock held in custody.
 - Fence-out Theory
 - If livestock trespass due to an adjoining neighbor's negligence of fence maintenance, the livestock owner is NOT liable for damages.

Establishing a Fence Agreement

- Responsibility is sometimes determined by the "right-hand rule" although it is not law.
 - *This is an informal arrangement where landowners face each other at the midpoint of the fence and agree to maintain the portion which is to their right side*
- Both Landowners agree - Landowners have a written agreement.
 - *Agreement can be filed with the county recorder making the agreement binding upon the original parties, their heirs, and subsequent owners.*
- Landowners disagree – Request fence-viewers (the township trustees) to allocate responsibility.
 - *Township trustees are elected and are authorized by state law to render opinions.*

Fence Dispute Resolution Process

- When landowners disagree, the statutory process is invoked:
 1. Complaining landowner submits a written request to the other landowner for the erection of a fence.
 2. If the request does not resolve the matter, the complaining landowner submits a formal request to the township trustees to resolve the dispute.
 3. Trustees give five days written notice to both parties concerning the time and place of the hearing.
 4. Trustees meet and issue a written order that allocates responsibility for maintenance and/or erection.
- Landowners may need to compensate trustees with a small fee.
- Trustees are to divide responsibility to build and maintain partition fences equally between the parties regardless to which party gains primary benefit from the fence construction.
 - Trustee's decision is binding.
 - However a landowner can appeal to the local district court by filing a notice of appeal within 20 days after the trustee's decision and filing an appeal bond.

Habitual Trespass

- When livestock trespass onto a neighbor's land on three or more occasions within one year's time (*Ch. 169C*).
- After determination by local authorities, the neighbor may submit a written request to the responsible landowner to erect or maintain fence through which trespassing is occurring.
 - If no action is taken within 30 days, the fence viewer system may be enacted.

Building a Legal Fence

- Three rails of "good substantial material" fastened to "substantial posts" not more than 10 feet apart.
 - A fence for merely land division can utilize 3 barbed wires.
 - The bottom wire should be between 16 & 20" from the ground, and the top wire 48-54".
- "Tight Fence" (woven wire and barbed wire) may be required if sheep or swine will be on property.

Fence Location

- If a fence has been utilized as the boundary for a period of 10 years, the fence can establish the property line regardless of land survey results. *This is known as boundary of acquiescence.*
- Similarly, a misplaced fence can become the true boundary under prescriptive easement.
- Fence viewers DO NOT have the power or authority to determine precise fence location.
- When maintaining fence, landowners should deem the property line extends upward and all trees hanging on their "property" need to be trimmed to prevent limbs from damaging the fence.

Fences along Roadways

Neither the Iowa Code nor Iowa DOT rules reveal any implications for the DOT nor any other government entity to maintain partition fences other than regular duty stated in Iowa code: respective owners of adjoining tracts of land are jointly responsible for the maintenance of a partition fence. However, if land is condemned for a highway and a fence is located on that land, the government is responsible for erecting a new fence; as it is responsible for all costs of replacing or moving any existing fence. The county engineer can share the jurisdictional information on the road ditch to determine who is responsible for tree maintenance in road ditches.

Fences along Railroads

Iowa is served by 19 freight railroad companies, which operate 3,925 miles of track within Iowa. Five of these railroads are major national companies operating throughout much of the United States and Canada. These railroads operate 82 percent of Iowa's total route miles, including much of the Iowa grain-gathering network.

According to Iowa Code Chapter 327G.3: "All railway corporations owning or operating a line of railway within the state, shall construct, maintain, and keep in repair a fence on each side of the right of way, to prevent livestock getting upon the tracks".

To make a formal fence request, contact the company that owns or operates the track bordering your property. A list of railroad companies that operate in Iowa along with their contact information can be found at:

<http://www.iowadot.gov/iowarail/railroads/industry/profiles.aspx>.

Good Fences Make Good Neighbors

When developing a fencing agreement with your neighbor, make sure to document the entire process. Record dates upon which you spoke with your neighbor and always make a copy of documents sent back and forth.

Additional Resources:

As always, contact the Association, 515.296.2266, if you have any questions concerning fence or livestock trespass issues. The Iowa Cattlemen's Association has been and will continue to be a strong benefactor to the Iowa Fence law and works diligently to ensure the law is followed and protected.