

## What are the responsibilities of the Township Trustees?

If a fence complaint is received by the township trustees, they shall do the following:

- 1) Before the complaint is filed, the trustees shall provide the aggrieved landowner with a document containing both of the following:
  - a.) Notification that an action can be filed in court in lieu of filing a complaint with the board of trustees; and
  - b.) A description of the possible financial and maintenance responsibilities that may result from the board's findings.
- 2) The aggrieved owner shall sign and date the document prior to the board of trustees accepting a fence complaint.
- 3) After a notice of rights and a complaint is filed with the trustees, a fence viewing shall be scheduled with at least 10 days notice to landowners.
- 4) At the fence viewing, the trustees shall determine whether a partition fence exists, regardless of its condition, or whether there is evidence that a partition fence previously existed.
- 5) If there is no evidence of a fence and no evidence that a fence previously existed, the board shall review the partition fence records on file at the county recorder's office to determine if an affidavit or an agreement has previously been filed.
- 6) The board of trustees may request additional information from the parties.
- 7) At the next regularly scheduled board meeting after the fence viewing, the board shall determine if a partition fence is required to be built or maintained in good repair.
- 8) If the board determines that a partition fence is required to be built or maintained, the board shall decide each owner's equitable responsibility and put it in writing.
- 9) When making an equitable assignment, the board may assign a specific portion of the fence to be built or maintained, OR the board may assign a portion of the total cost of building or maintaining the fence, if the owners have submitted to the board an estimate from a contractor of the necessary cost to perform the applicable work.
- 10) The assignment of the cost of building a fence shall include the cost of building or modifying the fence to meet the standards for a preferred partition fence.
- 11) The board shall certify a report of an assignment to the county recorder for recording.
- 12) Property owners have the right to accept the decision of the trustees or request binding arbitration. If binding arbitration is requested by one or both owners, the board of trustees shall submit a report of its recommendation of assignment to the court of common pleas in which the arbitration is to be held. The board will have no further involvement after that point.

## What other changes are in the law, effective September 30, 2008?

- 1) The law defines "build a fence", "construct a fence", and "maintain a fence in good repair" to include any necessary clearing of land.
- 2) The definition of "partition fence" has been expanded to include a fence that historically has been thought to be on the property line, but a subsequent survey shows that it is not on the property line.
- 3) The owner of livestock is responsible to keep the livestock contained without regard to who is responsible for maintenance of the fence.
- 4) Unless otherwise agreed, the fence to be built on the property line is a "preferred partition fence".
- 5) If an agreement is filed with the county recorder, the agreement "runs with the land" and is binding on subsequent owners.
- 6) Not fewer than 28 days prior to removing a partition fence, an owner shall notify an adjoining owner, in writing, that the owner intends to remove the partition fence. Notice shall be served personally or by certified mail.
- 7) If an owner removes a partition fence without the proper notice, he forfeits his right to reimbursement for the construction and maintenance of a new partition fence.
- 8) No owner shall place any debris accumulated from the removal of a partition fence on adjoining property without entering into a written agreement with the adjoining owner. If there is no written agreement, the adjoining owner has a cause of action for the cost of removing the debris. Any action may include a request for attorney's fees.
- 9) An action for trespass by the owner of adjoining property against the owner removing a partition fence may include a reasonable request for the court costs, attorney fees and other litigation costs.
- 10) Current law still requires all brush, briars, thistles or other noxious weeds be kept cut four feet away from a partition fence.
- 11) "Equitable shares" may mean that one landowner is not responsible for any expense of the fence construction or maintenance.

*This brochure is meant to be an educational tool and should not be perceived as legal advice. If you feel that you need more information regarding an incident involving Line Fence, please contact an attorney.*



Prepared by:  
**Public Policy Department**  
**Ohio Farm Bureau Federation**  
P.O. Box 182383  
Columbus, OH 43218-2383  
614.249.2400  
[ofbf.org](http://ofbf.org)

1806 (1/09)

# Good Fences Make Good Neighbors



## **Effective Date of the Current Law: September 30, 2008**

### **Who is subject to the new law?**

- 1.) An owner of: land in fee simple, an estate for life, easements, or right-of-way while used by the owner thereof as farm outlets;
- 2.) If the owner requesting the fence has livestock, the law may apply to:
  - a. The Department of Natural Resources;
  - b. A conservancy district;
  - c. A political subdivision with a real property interest in recreational trails.

### **Are there exceptions where the Line Fence Law does not apply?**

Yes, the line fence law does not apply to the following:

- 1.) The enclosure of lots in municipal corporations;
- 2.) The enclosure of adjoining properties that are laid out into lots outside of municipal corporations;
- 3.) Fences that are required to be constructed by railroads under O.R.C. 4959.

### **Are there other situations where the law doesn't apply?**

Yes, does not apply when:

- 1.) The fence is not considered a partition fence;
- 2.) The adjoining landowners enter into a written agreement (should be recorded);
- 3.) The partition fence existed prior to September 30, 2008.

### **What does Line Fence Law require?**

Line fence law is based upon a two-prong approach, depending upon whether a current fence existed prior to September 30, 2008, or if there is no fence.

### **What if there is a fence currently in existence?**

If a partition fence existed between adjoining properties prior to September 30, 2008, the owners of the adjoining properties shall maintain the fence in good repair in equitable shares in accordance with the current line fence law. This is the case regardless of the condition of the fence.

### **What does "Equitable" mean?**

The law provides all of the following factors shall be considered when determining what is equitable:

- 1.) The topography of the property;
- 2.) The presence of streams, creeks, rivers, or other bodies of water;
- 3.) The presence of trees, vines, or other vegetation;
- 4.) The level of risk of trespassers on either property due to the population density surrounding the property or the recreational use of adjoining properties.
- 5.) The importance of marking division lines between the properties;

- 6.) The number and type of livestock owned by either owner that may be contained by the fence.

### **What happens if there is no fence?**

If a partition fence does not exist, no matter what condition, and an affidavit has not been recorded at the county recorder's office stating that the fence was at one time in existence and has been removed and not replaced, and no written agreement between adjoining property owners has been filed with the county recorder's office, the owner that wants a partition fence shall bear the entire cost of building and maintaining in good repair the partition fence. The owner should file an affidavit at the county recorder's office stating the costs of maintaining and building such a fence.

### **What if the neighbor puts livestock against the fence?**

If a neighbor places livestock against a fence built, maintained and paid for solely by the adjoining property owner and an affidavit is on file with the county recorder stating such costs associated with the fence, the neighbor can be made to reimburse the adjoining owner the depreciated value of the costs and repairs of the fence. A fence is considered to depreciate at the rate of 1/30 per year, up to 30 years. A successor owner is liable if the property has been transferred.

### **What if I don't file an affidavit?**

If an affidavit is not filed by the original owner or his successors, the neighbor cannot be made to pay reimbursement.

### **What if my neighbor doesn't reimburse me?**

The law states that the adjoining owner shall promptly pay any reimbursement for the partition fence. If the neighbor doesn't pay, the original owner has a right to file an action in court.

### **What if my neighbor is a government agency?**

Notwithstanding any other provision of the law, the Department of Natural Resources, a conservancy district, or a political subdivision with a real property interest in recreational trails is responsible for fifty percent of the total cost of building and maintaining in good repair a partition fence, unless a written agreement has been entered into. This only applies if the fence is used to contain livestock.

### **What happens if I remove a fence, but I want to proceed under the provision requiring assignment?**

If the fence was removed within two years prior to September 30, 2008, the owner has one year after September 30, 2008 to file an affidavit with the county recorder stating that the fence has been removed and not replaced and specifying the location of the fence. If the fence is removed after September 30, 2008, the owner removing the fence has one year to file an affidavit to be covered under the law in existence prior to September 30, 2008. If an affidavit is not filed within the applicable time frame, the person requesting the fence will be responsible to build it.

### **What kind of fence do I have to build?**

Prior to September 30, 2008, the law did not specify the type of fence to be built; however, the common type ordered was a close woven wire fence, with a strand of barbed wire at the top.

The current law provides for a "preferred partition fence". A "preferred partition fence" means a fence that is woven wire fence, either standard or high tensile, with one or two strands of barbed wire located not less than forty-eight inches from the ground, OR, a nonelectric high tensile fence of at least seven strands constructed in accordance with the NRCS conservation practice standard for fences, Code 382.

Adjoining landowners can agree, in writing, to have a fence other than a "preferred partition fence", such as barbed wire, electric or live.

### **What happens if my neighbor has deer and wants an 8-foot high fence?**

Nothing in the current law prevents an owner from building a fence that exceeds the requirements for a preferred partition fence (i.e. plastic, wooden, 8' high), however, the owner building such a fence shall pay all additional costs and expenses of building the fence and maintaining it in good repair beyond the cost of a preferred partition fence.

### **Are there any protections for fence builders?**

Yes. If an owner chooses to build a partition fence and the adjoining owner does not share in construction of the fence, the owner building the fence, or his contractor, may enter onto the adjoining property for no more than 10 feet for the length of the fence to build and maintain the fence in good repair. However, the fence builder can be liable for damages to the adjoining property, including crops.

If anyone obstructs or interferes with anyone who is lawfully engaged in the construction or maintenance of a partition fence, he may be found guilty of the following:

- 1.) If the violator made a threat of physical harm, second degree misdemeanor (\$750/90 days in jail);
- 2.) If the violator caused physical harm, first degree misdemeanor (\$1,000, 6 months in jail);
- 3.) If the violator caused serious physical harm or death, fifth degree felony (6-12 mos., \$2,500 fine).

### **What can I do if my neighbor doesn't cooperate?**

An aggrieved landowner can choose one of two remedies. One, file a complaint with the board of township trustees. Two, file an action directly in the county court of common pleas.

If an aggrieved landowner chooses to file a complaint with the board of trustees, any appeal of the trustees' decision will be between the adjoining landowners and will go to binding arbitration in the county court of common pleas.

If a case is filed in court, it will involve the adjoining landowners, and the court, like the trustees, is required to assign the fence in equitable shares. Any appeal of the court's decision will be to the court of appeals.

(CONTINUED)