

Many questions and problems arise on Kansas' farms and ranches concerning the duties and rights associated with fences. Kansas has numerous laws that spell out regulations to assist with fence disputes. More specifically, our laws prescribe when a fence is required, what a legal fence is, how responsibility for a fence is divided, and how to resolve disputes between property owners.

One of the major areas of fence laws that raise concerns is the rights and duties of landowners on adjoining properties. Typically, a "partition" or "line" fence is a fence on or near the boundary line separating adjoining properties. Our state requires landowners of adjoining properties to erect and maintain partition fences between the properties. These statutes contain a "forced-contribution" or "cost-share" component that requires the adjoining landowners to share the cost of erecting and maintaining the partition fence, unless the parties agree otherwise.

Keep in mind Kansas is a fence-in jurisdiction. This means that livestock owners are required to fence their animals in. As stated above, our laws require the owners of adjoining lands build and maintain in good repair all partition fences in equal shares. This sometimes creates conflict.

**What Is A Legal Fence?** The definition has changed over time but was clarified in 1986 by the Kansas Legislature. A legal fence can be constructed and composed of a number of different kinds of materials from post and rails to stone or even a hedge, but we will be reviewing the more common fences in our state, which are barbed wire and electrical.

The minimum legal barbed wire fence is:

- Not less than three wires;
- The third wire from the ground not less than 44 inches nor more than 48 inches from the ground;
- The bottom wire not more than 24 nor less than 18 inches from the ground;
- The center wire equi-distant, or nearly so, between upper and lower wires;
- The wires to be well stretched and barbed;
- The barbed wire shall be composed of two wires not smaller than #13 or one wire not smaller than #9 or wires having not less than 950 pounds breaking strength
- All wires to be securely fastened to post;
- Posts are not more than two rods apart;
- Posts are not less than 20 inches in the ground and set in a workmanlike manner; and
- The posts may be not more than 48 feet apart, with slats placed perpendicularly, not more than 12 feet apart between the posts and fastened to the wires.

For an electric fence to be a legal fence, the fence must meet the following qualifications:

- An electrically charged wire;
- At least one 14 gauge wire or its equivalent; and
- The wire not more than 48 inches from the ground.

The Kansas Legislature provides any board of county commissioners may enact a more stringent set of requirements for a legal fence in their respective counties. Therefore, you should check with your

local county commissioners to determine whether the legal fence standards in your county are different from those listed above. Keep in mind, the commissioners may determine that an electrically charged wire fence is not a legal fence in their respective counties.

**Partition Fences:** A Partition Fence is one located on the border between two adjacent properties held by different owners. It may be used as a common fence, meaning that each of the adjoining landowners may use it as an enclosure. These fences may be used to prevent trespassing or to mark the boundaries of the enclosed land and the possession of the person claiming title thereto.

Generally, the owners of adjoining lands are required to build and maintain in good repair all partition fences in equal shares, unless the parties agree otherwise. In practice, however, many adjoining landowners adopt the “right hand” or “left hand” rule, whereby they face each other at mid-point of their fence and agree to build and/or maintain the portion of the fence to either their respective right or left. Nevertheless, the Kansas statutes state the building and maintenance shall be in equal shares, not in halves.

If one person fails to keep his share of a partition fence in good repair and injury results to him because of his defective fence, he cannot recover for damages caused by the adjacent landowners stock. Also, the person who fails to maintain his share of a partition fence will be held liable to others who are damaged by stock escaping through the defective partitioned fence, regardless of who owns the livestock.

Controversies do arise concerning partition fences. The Kansas law does provide for settlement of these problems by any two county commissioners in the county where the fence is located. The county commissioners called in to resolve such quarrels are called fence viewers.

**Fence Disputes:** Possibly one of the most contentious areas involving rural landowners in our state is disputes over partition fences. Many times adjoining landowners come to an agreement on how to allocate the responsibility between the parties to build, maintain, or repair a partition fence. If the parties reach an agreement, we suggest they put the details in writing and record it at the county Register of Deeds office. But, if a dispute arises and an agreement cannot be reached, what can you do to resolve this type of issue?

Our state laws provides a method of settling these problems. The adjoining landowners can seek the assistance of two county commissioners in the county where the fence is located. Theses individuals are called “fence viewers”.

When controversies arise concerning the rights and responsibilities of the respective parties of a partition fence, either landowner may apply to the fence viewers to resolve their disagreement. The fence viewers will view the fence and then provide a written decision as to the party’s obligations to build, maintain, or repair the fence. The decision of the fence viewers will be recorded at the Register of Deeds office in the county where the fence is located. This decision of the fence viewers is final, nonappealable, and binding upon the parties and all succeeding occupants of the land.

If either party decides to disregard the ruling of the fence viewers, the other party may erect, repair, or maintain the entire fence and charge the nonperforming party for its share of the cost of the fence, plus interest and attorney fees, if legal action is necessary for collection. In any event, it remains clear that good fences make good neighbors.

**Trespassing Livestock:** Who is responsible? What duty is owed? What can you do if your neighbor's livestock gets out and damages your property? Our state law encourages the owners of livestock that trespasses on others property to make amends as quickly as possible.

Kansas Statutes provide that it is unlawful for any domestic animal (primarily livestock) to run at large. So it is important for livestock owners to exercise "reasonable care" and "reasonable precautions" in confining their stock in order to avoid civil liability. Consequently, livestock owners can be responsible for damage caused by their animals if they are negligent in the care and custody of their livestock.

The courts have examined a number of factors in determining whether an individual has been negligent in the care and custody of their animals. Some of the key points the courts have used to determine liability are as follows:

- The quality of the owner's fence,
- Whether the landowners animals are habitually found roaming outside of their confines,
- Whether the owner caused the animals to escape,
- Whether the owner adequately feeds the livestock, and
- Whether the owner makes immediate attempts to recapture the animals.

Clearly, there may be other factors that enter into the situation that may cause the livestock owner to be negligent for damages caused by their animals running at large.

Finally, if livestock do trespass and cause damage to another's property, the aggrieved landowner may retain these animals until he/she is paid for said damages. In essence, this gives the injured party a possessory lien against the livestock. If an injured party does retain trespassing livestock, he will need to do it properly. They will need to feed and care for the animals just as if they were their own. In addition, they will need to notify the owner (within 24 hours if known) and authorities as soon as possible. Once notice is given, the person taking the livestock cannot retain them for more than five days without commencing legal action for recovery of the damages caused by the animals.

**For more information, please contact Mike Irvin, Director of the KFB Legal Foundation at (785) 587-6621 or Terry Arthur, General Counsel, KFB. Please visit the KFB Legal Foundation web site, <http://www.kfb.org>. For specific situations be sure to consult a lawyer.**