

Note: This Fact Sheet is Outdated due to a Change in the Line Fence Law as of September 30, 2008



Ohio State University Fact Sheet

Agricultural, Environmental, and Development Economics

2120 Fyffe Road, Columbus, Ohio 43210

Ohio Line Fence Law

ALS-1001-00

Peggy Kirk Hall

Legal Educator

Ohio State University Extension

It surprises most citizens to learn that Ohio has an entire section of law dedicated to fences. But those who have lived in rural communities may know that fence law plays an important role in agriculture. Issues such as the maintenance of shared fences, improperly placed fences, and the duty to enclose livestock all arise in agricultural situations. For this reason, fence law is largely of rural application.

Most fence law pertains to "partition" or "line" fences – those fences in rural areas that are placed on the division line between two properties. This fact sheet explains the line fence law in Ohio and how the law affects the rights and obligations of landowners sharing a line fence.

The History of Line Fence Law in Ohio

The history of fence law begins with livestock. Ohio is not the wild west now, but long ago cattle roamed freely on Ohio's open range. The state abided at that time by a "fencing out" policy. A livestock owner had no legal duty to fence in his/her livestock. Rather, the landowner who did not want roaming livestock on his property had a legal duty to "fence in" the property. Any land

Note: This Fact Sheet is Outdated due to a Change in the Line Fence Law as of September 30, 2008

not enclosed by a fence was considered open to livestock, and the landowner had no cause of action for property damaged by the grazing livestock.

The end of the open range in Ohio came around 1865. The state's population had grown and the amount of land in cultivation had increased, creating conflicts between livestock grazing and other land uses. It became unlawful to allow livestock to run at large. Ohio's "fencing out" law became a "fencing in" law, and a livestock owner who did not fence in his livestock and keep the animals from running at large was liable for resulting property damage.

With an expanding population and a legal duty to "fence in" livestock, the number of fences across Ohio multiplied, as did the need for laws governing the construction, maintenance, and use of fences between properties.

Line Fence Law Today

Ohio's line fence law today addresses many fence issues that have arisen over the years. The law, contained in Chapter 971 of the Ohio Revised Code (ORC), determines how line fences are to be constructed, paid for, and maintained, and provides a process for assigning and enforcing the rights of landowners sharing the fence.

Construction of the Line Fence

If one landowner wants to construct a line fence, Ohio law provides that the neighboring landowner must share equally in the cost of building the fence. Specifically, the law states that "[t]he owners of adjoining lands shall build, keep up and maintain in good repair, in equal shares, all partition fences between them. . . ."¹

For example, Ann and Frank are neighboring farmers, and Ann tells Frank that she wants to build a fence between their properties. The law requires Frank to pay for an equal share of the cost of building the new line fence. Note that there are exceptions to this requirement, which are explained later in this publication.

Maintenance of the Line Fence

The line fence law also allocates responsibilities for repairing and maintaining existing line fences. According to the law, adjoining owners shall ". . . keep up and maintain in good repair" the line fence between their properties. As with construction of a new fence, the adjoining landowners are equally responsible for repairing and maintaining an existing fence.

Imagine in the previous scenario with neighbors Ann and Frank that a line fence already exists between the properties, but it is old and falling over. Ann repairs one half the length of the fence, and asks Frank to repair the other half. Ann is completely within her legal rights by expecting

Note: This Fact Sheet is Outdated due to a Change in the Line Fence Law as of September 30, 2008

Frank to have equal responsibility for repairing the fence. Again, there are exceptions to this requirement, which are explained later.

Ohio law does not state which neighbor is responsible for which part of the fence. However, it is common practice for neighbors to agree to be responsible for the half of the fence to their right as each stands looking at the fence from his or her respective property.

Lack of Agricultural Use Is Not an Excuse

The law appears harsh when examined from the perspective of a landowner who doesn't plan to use the fence. With the few exceptions stated later in this fact sheet, a landowner must share in the costs even if he or she is not a farmer, does not have livestock, or never intends to use the fence. The fence law clearly states:

"The fact that any land or tract of land . . . is not used, adapted, or intended by its owner for use for agricultural purposes shall not excuse the owner thereof from the obligations imposed by this chapter. . . ." 2

Constitutional Challenges to the Line Fence Law

Because the line fence law can place obligations upon unwilling landowners, there have been numerous legal challenges to the law as an unconstitutional "taking" of property or an unfair "property assessment." Ohio courts have allowed the law to stand, however, on the basis that a fence prevents trespassing, which benefits the property. Even if the landowner doesn't actively use the fence, the landowner benefits from the fence, and should pay for the benefit, according to Ohio courts.

Exceptions to Line Fence Responsibility

There are exceptions to the line fence law. These exceptions relieve a landowner of the obligation to share equally in the cost of building or maintaining the fence.

1. Cost outweighs benefit.

The Ohio Supreme Court has developed an exception to the line fence law that addresses the perceived unfairness of the law. Where a landowner can prove that the cost of a fence outweighs its benefit to the property, the landowner is not required to pay for the fence.³ To meet this exception, the landowner must offer evidence to the township trustees of the values of the property before and after the construction of the fence.⁴ If the trustees determine that the value of the property does not increase in proportion to the cost of the fence, the landowner will not be obligated by the requirement to pay for one half of the fence. A landowner makes a cost-benefit challenge during the fence viewing process, which is described later.

Note: This Fact Sheet is Outdated due to a Change in the Line Fence Law as of September 30, 2008

2. Agreement of the landowners.

Adjoining landowners may agree between themselves to allocate costs or obligations differently than the equal apportionment mandated by the line fence law. To be valid, the agreement must be in writing, signed by the landowners, and witnessed by two people.

3. Land in lots.

The line fence law is largely of rural application and does not apply to properties that are within municipal corporations. That is, an owner of a lot in a city, town, or village cannot require a neighboring lot owner to contribute to the costs of a fence placed between the properties. There is also an exception for land "laid out in lots" outside of a municipal corporation. Two or more properties in a rural area that are each surveyed, platted, and approved in accordance with Ohio's subdivision requirements are not subject to the line fence law.

4. Railroads.

A separate area of law pertains to railroads. As explained later, railroads usually must bear the entire cost of constructing or maintaining the line fence.

Requirements for Type and Condition of Fence

Certain types of line fences are not permitted in Ohio. A line fence may not be entirely composed of barbed or electric wire unless the adjoining landowner consents in writing. Placing one or two strands of barbed wire at the top of another type of fence does not require a neighbor's approval if the barbed wire is at least 48 inches from the ground. Living fences are prohibited with two exceptions – osage or blackthorn hedge may be used to create a line fence.

Ohio's Attorney General has stated that a line fence should be "good and substantial," that is, "capable of turning livestock ordinarily kept by farmers, including sheep."⁵ One Ohio court has stated that as long as a fence meets the standard of "good and substantial," a landowner cannot be forced by an adjoining landowner to pay for the cost of replacing the fence.⁶

Maintaining the Fence Row

Ohio's line fence law also requires landowners to keep the fence row free of certain types of vegetation. A property owner must clear all brush, briars, thistle, or other noxious weeds from fence corners and within four feet of the fence. Trees and vines may remain in the fence row.

Generally, a failure to cut back brush in the fence row is a problem only if an adjoining landowner requests that the brush be cleared. If the landowner does not cut back the vegetation after such a request, the adjoining landowner may seek enforcement of the law, explained later.

Note: This Fact Sheet is Outdated due to a Change in the Line Fence Law as of September 30, 2008

Removal and Destruction of Fences

A person may not remove or destroy a line fence without the permission of the adjoining landowners. At least two Ohio courts have prevented one landowner from tearing down a line fence when the adjoining landowner had not consented to the removal. Where a person unlawfully removes a fence, that person will be liable to the adjoining landowners for resulting damage.

Liability also attaches to a person who harms or destroys a fence. Cutting through a fence, knocking down a fence, or removing fence posts or gates creates a claim for property damage on behalf of the fence owners.

Fences and Streams

Ohio law also addresses the situation where a stream marks the dividing line between two properties. If the landowners cannot or do not want to place a fence down the middle of the stream, or cannot agree to place the fence otherwise, the township trustees will be called in to determine placement of the fence. The trustees must assign a share of the fence to each landowner, to be joined by a fence or water gate through the stream. In this case, each landowner is responsible for the share of the fence on his or her property, up to the division line in the stream.

A second situation that can arise with water is where a dividing line crosses a stream. The law requires that the landowners share equally in the construction and maintenance of a water gate across the stream.

Enforcement of the Line Fence Law

Disputes over line fences fall within the jurisdiction of the township trustees in the township where the fence is located. A landowner seeking enforcement of the line fence law must turn first to the township trustees for an "assignment" of fence responsibilities. Note that a landowner may not seek enforcement against a resident of an adjoining state, where the property line borders two states.

The Fence Viewing Process

Where an adjoining landowner refuses to pay for half the cost of constructing or maintaining a fence, the aggrieved landowner may request a "fence viewing" by the township trustees. The fence viewing is an examination of the fence or the location where the fence is to be built. The trustees must notify all affected landowners at least 10 days in advance of the viewing, and each landowner is permitted to be present.

Note: This Fact Sheet is Outdated due to a Change in the Line Fence Law as of September 30, 2008

A landowner seeking an exception from the line fence law must argue the exception to the trustees. If the landowner claims that the cost of the fence outweighs its benefit, the landowner must prove so by submitting evidence of the cost and benefit of the fence. The other landowner may try to dispute the evidence. The trustees must allow an affected landowner the opportunity to argue that the fence law should not apply in his or her situation.

After the fence viewing, the trustees determine the allocation of costs or responsibilities for the fence. The trustees must make a written "assignment" of each landowner's obligation and notify the landowners of the assignment. If a landowner fails to abide by the assignment, the aggrieved landowner may apply for relief with the township trustees. The trustees then have the authority to order construction of the fence by a third party. The costs of construction, if not paid by the landowner, may be paid by the county auditor and assessed as a tax against the landowner's property.

If a landowner disagrees with the trustees' assignment, he or she has the right to make an appeal of the decision. The Court of Common Pleas in the county where the land is located hears the appeal by reviewing the trustees' decision and determining its validity. The landowner also has the right to appeal the county court's determination, which would occur within the Ohio Court of Appeals. A dissatisfactory decision by the Court of Appeals may be reviewed by the Ohio Supreme Court, if the Court accepts the case for review.

The fence viewing procedure is also utilized where one landowner refuses to clear a fence row. The aggrieved landowner must allow the adjoining landowner at least 10 days to respond to a request to clear the fence row. If the adjoining landowner does not clear the vegetation, the aggrieved landowner may notify the township trustees. The trustees must view the fence row and determine if it requires cutting. If so, the trustees are authorized by law to hire someone to clear the fence row, and the cost is assessed on the neglectful landowner's property taxes.

The Partition Fence Record

Ohio law requires each county recorder to maintain a "partition fence record." After making a written assignment of responsibility for a line fence, the township trustees must send the assignment to the county recorder for placement in the partition fence record. The recorded assignment is binding on future landowners, but the law provides that a new division of responsibility may be had where the current assignment becomes unequal by a sale or division of property.

When the Neighbor Is a Railroad

The responsibilities for line fences differ when a railroad is involved. In this case, the railroad company must construct and maintain a fence "sufficient to turn stock" on the property line on each side of the railroad. The railroad must also construct cattle guards at crossings. These duties

Note: This Fact Sheet is Outdated due to a Change in the Line Fence Law as of September 30, 2008

do not apply to a "scenic railway," which the law defines as "a railroad operated not for profit and exclusively as a tourist or historical attraction."⁷

The Ohio Public Utilities Commission has authority to force a railroad to comply with the fence statute if the adjoining landowner has comparable fencing that would connect to the railroad fence. The commission can either order the railroad to construct or repair the fence or to pay for or provide the adjoining landowner with materials to construct or repair the fence. In the latter case, the adjoining landowner must provide the labor to construct or repair the fence.

Where a railroad company fails to construct or repair a fence after being ordered to do so by the Public Utilities Commission, the adjoining landowner may construct or repair the portion that abuts his or her property and demand payment from the railroad for all materials and labor. If the railroad refuses to make payment, the landowner may recover a minimal amount of attorney fees if he or she has to pursue payment in court. The landowner may follow the same procedure if the railroad fails after 30 days to repair a fence after being notified by the landowner that the fence is damaged.

Line Fences in the Wrong Places

Old surveys and prior landowners were not always accurate when placing fences. A new survey sometimes reveals that a partition fence is not placed on the property boundary line and actually encroaches on one property or another. Landowners in this situation have several options.

Ohio law recognizes a "doctrine of acquiescence" where adjoining landowners have treated a fence line as if it were the boundary line between the properties. This doctrine provides that if the current or prior landowners have mutually respected and treated the line fence as the boundary line for a period of 21 years or more, the fence does become the boundary line between the properties. To enforce this doctrine, a landowner would need a court judgment stating that the doctrine applies to the property at issue.

A second remedy for a misplaced fence is for adjoining landowners to agree to move the fence to the original property line. The landowners should address how much each will pay for the expense of moving the fence. They could also enter into an "agreement establishing the boundary line," a remedy in Ohio law that allows landowners to agree to a boundary other than that revealed by the survey. In this situation, the logical boundary line is the line fence. A written, signed, and recorded agreement establishing a boundary line is binding on future landowners.

As noted earlier, a landowner may not remove and relocate the line fence without the adjoining property owner's permission. Where a landowner learns that the fence line is not on the true boundary line and then wants to move the fence accordingly, the other landowner must grant permission to move the fence. A landowner who moves the fence without permission of the adjoining landowner could be responsible for all costs of moving or replacing the fence to its original location.

Note: This Fact Sheet is Outdated due to a Change in the Line Fence Law as of September 30, 2008

Livestock and Line Fences

Where livestock break through a line fence, the owner of the livestock is responsible for all damages resulting from the trespass, including damages to the fence. However, where livestock trespass as a consequence of a line fence being in disrepair or inadequate, the person responsible for constructing or maintaining the line fence is liable for all damages. In this case, Ohio law creates a procedure in which damages are assessed by three disinterested residents appointed by the local court. If the neglectful party does not pay the determined amount of damages, the injured party may use the written assessment as proof of actual damage in a civil lawsuit.

For More Information

Read Ohio's line fence provisions in Chapter 971 of the Ohio Revised Code. The law is very clear and easy to understand. You can access the statute on the Internet at orc.avv.com.

¹ ORC 971.02.

² ORC 971.02.

³ *Alma Coal Co. v. Cozad*, 79 Ohio St. 348 (1909).

⁴ *Glass v. Dryden*, 18 Ohio St. 2d 149 (1969).

⁵ 1931 Ohio Atty. Gen. Ops. 3059

⁶ *Dye v. Columbia Township Board of Trustees*, 1986 WL 8184, (Ohio App. 4 Dist.)

⁷ ORC 4959.02(E).

The purpose of this publication is to provide accurate information on the subject matter. In providing this information, the author and The Ohio State University do not intend to offer legal or other professional services. The reader should seek the services of a competent attorney if legal advice is necessary.

All educational programs conducted by Ohio State University Extension are available to clientele on a nondiscriminatory basis without regard to race, color, creed, religion, sexual orientation, national origin, gender, age, disability or Vietnam-era veteran status.

Keith L. Smith, Associate Vice President for Ag. Adm. and Director, OSU Extension.

TDD No. 800-589-8292 (Ohio only) or 614-292-1868

| [Ohionline](#) | [Search](#) | [Fact Sheets](#) | [Bulletins](#) |