

March 27, 2015

FENCES AND NEIGHBORS

I received a call this week talking about a neighbor's lack of maintenance of a shared fence by the cattle owner. Earlier this year a client called about his right to a hedge tree pile and questions on access to a neighbor's property during fence construction. The following information is from Dave Aiken at UNL but in no way is it a substitute for good legal advice from an attorney. Ideally, you hope neighbors can agree between themselves on most fencing issues.

The Unicameral amended Nebraska's division fence laws in 2010 and created LB 667. The primary change is that the cost of a wire division fence is split 50-50 in all cases, except where the neighbors have agreed to a different division of the fence cost. It remains we have a litigation process where the parties go to court or mediation if they cannot agree.

Are division fences required? No, if neither neighbor wants the fence, there doesn't need to be one. However, if one neighbor wants the fence and the other neighbor doesn't, the fence builder can require the neighbor to pay half the cost of the fence even if the neighbor doesn't want the fence, doesn't have cattle or doesn't want to pay for the fence. NRS §34- 102.

Who pays for a division fence between two landowners? Both landowners share the cost of the fence 50-50, unless they have previously agreed to a different split. The 50-50 rule applies even if only one neighbor has cattle. NRS §34-102(1).

What if my neighbor refuses to pay his or her share? Under the statute, you must formally serve written notice upon the neighbor that you are going to build, maintain or repair the fence (obtain legal assistance). If the neighboring landowner does not live on the land, you must serve the notice to whoever lives there or the owner's agent (probably a tenant). The written notice must request that the neighbor either build, maintain or repair his/her portion of the fence, or else pay you for doing so. After the written notice has been served, you may begin fence construction, maintenance or repair (unless you have requested that the neighbor do so instead of you). Alternatively, you can file a lawsuit to force the neighbor to comply. NRS §34 - 112.02(1)(2).

Now my neighbor still won't pay, won't build or repair his side, so what's next? If you have properly served the written notice and the neighbor has not made arrangements to take care of their portion of the fence, you may sue them. You will need legal assistance in serving the written notice and your next step. If a lawsuit is filed, the neighbors may agree to mediate the dispute as an alternative to a lawsuit. If you don't mediate, the case proceeds as a normal civil lawsuit. NRS §112.02(3)(4)(5).

What about fence repairs and maintenance? The common approach for dividing the responsibility for fence maintenance is the "right-hand rule. Each landowner would face the other in the middle of the fence and would be responsible for the half of the fence to their right. If the neighbor didn't take care of his or her portion of the fence, the other neighbor could repair it and collect those costs in private litigation. If a case went to court, there is no telling how the court would divide the fencing responsibilities between the plaintiff and the defendant, it could be different than 50-50.

Do I need permission to cross over the line for repairs? No - the statutes give you the right to entry to your neighbor's property, but only to the extent reasonably necessary to build, maintain or repair the fence. However, you cannot remove trees, buildings, personal property or other obstacles without either 1) the neighbor's permission, or 2) a court order. NRS §34-112.01

Once landowners realize they must pay 50 percent of a new division fence, most will either pay their share or else build their half of the fence, as per the "right hand rule" approach for fence maintenance. Minimum Nebraska standards for the fence is in the article linked below. If a neighbor is not maintaining his or her half of the fence, the other landowner can formally notify the neighbor of the need for repair. If the neighbor does not agree, then off to court they go. Most attorneys should be able to persuade their clients to resolve the dispute without going to trial, but one never knows. A possible reason to pursue a lawsuit might be to gain some concessions from the fence builder in maintaining existing trees or shrubs, or other fence construction issues that you couldn't negotiate in mediation. More information is available at: <http://ow.ly/KPGsO>

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