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NEBRASKA FENCE LAW CHANGES

Some landowners have heard about the changes that have happened in Nebraska about what is a legal fence, but others are a bit surprised. Nebraska's recent fencing statute requires all landowners to split the cost of a division fence 50/50. Naturally that issue is bringing on some new questions.

In the past Nebraska fence disputes were resolved by fence viewers: each neighbor would pick one fence viewer, and the two would pick a third (the tie-breaker). The three fence viewers would decide how much of the fence each neighbor should pay for. The fence viewers had the discretion to have the cattle owner pay for most or all of the fence if the neighbor didn't have livestock. Or they could have said 50/50. Anyway, the type of fence that the neighbors had to share the cost on had to be a legal fence, unless they both agreed to a different type of fence.

But with the newer Nebraska statute, the fence viewer process is gone. Instead, there is a litigation process when neighbors can't agree on a fence. The current rule is, if at least one neighbor wants a division fence and wants to force the other neighbor to pay for part of it, (1) neighbors must share the cost of the division fence 50/50, no matter who has livestock and who doesn't, and (2) unless the neighbors pick a different type of fence (and it can be any kind of fence, not just a "legal fence"), the default division fence is a four wire fence.

UNL Extension Ag Law Specialist David Aiken recently wrote a good article on Nebraska fence law in Cornhusker Economics newsletter at <http://bit.ly/ptfQGS>. Aiken lists what is in the statutes for "legal fence" in the article.

Neighbors can agree to any type of fence they want to, whether they are on the legal fence list or not. But if they can't agree, then they share 50/50 the cost of installing and maintaining the cost of a wire fence as defined by NE statute §34-115(5).

Theoretically, I could put in a more expensive fence and pay for it myself. But if I want the neighbor to pay for part of my more expensive fence, the neighbor could only be required to pay for half of a four wire fence or the default four wire fence cost. What if there is a disagreement on the cost of the default fence?

Since 1867, Nebraska fence disputes were resolved by fence viewers to make the decision in the most difficult cases or disagreements. Now with the change in Nebraska law, the pressure is on an individual judge to be knowledgeable about fences and fence costs and make the correct decision.

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