

What Should I Do When Mother Nature Ruins My Fences?

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This winter and spring has caused many challenges for rural landowners here in Missouri. They have included ice, tornados, wind and floods along with the long winter we've had. All of these problems Mother Nature has dealt us have had an adverse effect on fences in many areas of the state. Let's discuss what you can (and can't) do when repairing or replacing fences along a property line in particular.

Many landowners in our state are facing the problem of repairing boundary fences (between 2 or more neighbors) as well as water gaps too, sometimes on a regular basis this spring. Some of the key questions that may arise as a result of this are: **(1) Can I go onto my neighbor's property in order to remove tree limbs or repair my water gap?** From a legal standpoint, Missouri's fence law provides that you may go onto your neighbor's land to repair a boundary fence. That would include removing anything that is obstructing it such as brush, trees, etc. **However**, it must be obstructing the fence in order for you to have the authority to do that. I would also suggest contacting the neighbor before doing that if there's any way to reach them letting them know what you plan on doing. **(2) Who has the responsibility for taking care of the water gaps?** I have heard several things on this over the years such as the person downstream is responsible for them to we split them 50 -50. Neither of those has any basis in the law either. Water gap maintenance is determined by which

portion of the fence the water gap is on (assuming you both own livestock in the general law counties). **(3) Can't we just put up a "hot wire" fence and be done with it?** The potential problem with putting up a high tensile or 2-strand electric or other type of fencing is that while you and your current neighbor may agree to that, it doesn't qualify as a legal fence in most cases and so you may have to replace it with a "legal" fence later on if a landowner changes and the new one doesn't agree to that.

In some cases the fence may in bad enough shape or non-existent so that it needs to be replaced completely. Some other issues come up when we have to replace the fence completely. **(4) Where do we locate a new fence when we're replacing an old one?** This may be the most complicated question we've discussed so far. The easiest answer would hopefully be put it in the same place where it was. **However**, that can cause a couple of other issues. Was the old fence on the exact property line? If it wasn't, will both parties agree to move it there (and can you agree that the new line is the right line)? Land surveys today are much more accurate than they were years ago **but** they're not always in agreement and have changed over the years (different spots). If the fence has been in its current location for a long time, one party may refuse to move it citing **adverse possession**. Adverse possession is a legal term that says if a fence has served as a boundary for 10 or more consecutive years and no one has argued otherwise, it can become the legal boundary. In order to move that fence to a different location if one neighbor refuses citing that, a court would have

to rule on it and that is expensive (hiring an attorney, etc.). **(5) We need to remove the brush along where the fence will be put, can I just doze the old fence and the brush out?** If both parties own livestock (assuming we're in a general law and not a local option law county where it would automatically apply), then first off you both are equally responsible for the fence. In order to remove what's left of an existing fence or doze out the line, you must both agree to that because you both own and undivided 100% of the fence. Second, tradition in Missouri says 10 feet on both sides of the line can be cleared to put in a new fence. **However**, a tradition is not the law. I do suggest that the 10 feet is common sense and will avoid problems with the fence later on but if a neighbor just refuses, then you can't remove trees or brush that are not obstructing the fence line. The "sticky" issue is that if the neighbor does not want the fence taken out, you cannot legally take out any of it (unless only one of you has livestock in a general law county). **(6) I've just decided to put a fence 10 feet inside my property line and not hassle with the neighbor.** While you can certainly do that, you and your neighbor will then want to put something in writing on both deeds to avoid potential adverse possession claims down the road.

Hopefully this answers a few of the most common questions being asked right now. You can get a copy of the University Extension guide on fence law at <http://extension.missouri.edu/explore/agguides/agecon/g00810.htm> or at your local Extension Office in your county. Specific fencing and boundary questions can be

directed to me at koenenj@missouri.edu or through your local office too. **Remember that this information is for educational purposes and is not intended to be a substitute for competent legal advice.**