

## **Agricultural Law Issues for Missourians**

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My purpose here is to highlight agricultural law issues which may face Missouri farmers, rural residents, agribusiness, insurance agents, lenders....the list never seems to end! Think of this as a “checklist for the subconscious mind,” in hopes you can take steps to avoid these pitfalls happening to you and your clients.

### **Hunters and Trespassing**

If you don't want hunters on your land, you will want to consider posting signs or marking posts (or trees) with purple paint marks. Missouri doesn't require “no trespassing” signs to use specific words or use a minimum size sign...just that the sign be readily visible and understandable to an ordinary person.

In 1993 Missouri added the option of “purple paint markings” to post land against trespassers. Here there are requirements: vertical strips at least nine inches in length with the bottom at least three feet and no higher than five feet above the ground, and the posts or trees with the purple paint markings cannot be further than 100 feet apart.

Even if you don't have signs or purple-paint markings, you can still verbally tell trespassers to leave or be charged with first-degree criminal trespass (if convicted, this is a misdemeanor B with maximum fine of \$500 and/or maximum jail of 6 months).

For more information, see the article “Posting Against Trespassers” at <http://aglaw.missouri.edu/postingagainsttrespassers.htm>.

### **Terminating Verbal Farm Leases**

With crops being harvested and landlords and their tenants thinking ahead to the next year, the issue comes up of how to go about renegotiating or terminating a verbal farm lease. Missouri has a statute, Chapter 441.050, which requires at least 60 days written notice before the end of the year (interpreted as “end of the existing lease year”).

Here is the web site for that statute: <http://www.moga.state.mo.us/statutes/C400-499/4410050.HTM>

This applies to a tenant wanting to avoid the automatic renewal of the traditional periodic year-to-year farm lease, as well as to the landlord wanting not to renew the lease with the present-year tenant.

You (landlord or tenant) can give much more than the minimum 60 days written notice, so don't delay if you don't want to continue the present lease relationship.

Written leases have their own clauses on how to go about terminating or renewing the lease, so this above statute doesn't apply to written leases.

For more information, see the article "Verbal Farm Rental Agreements Under Missouri Law" at <http://aglaw.missouri.edu/verbalfarmleases.htm>.

## **Fence Agreements**

Most of you are aware Missouri revised in August, 2001 its fencing statute for the general fencing law counties. These changes are discussed in the article "Missouri Fencing and Boundary Law" at [http://aglaw.missouri.edu/guide810\\_fencinglaw.htm](http://aglaw.missouri.edu/guide810_fencinglaw.htm).

What seems to continue to haunt us though is the notion of a fencing agreement between neighbors as to the building and maintenance of divisional (boundary) fences. If the neighboring landowners can agree to such terms, their agreement must be in writing and signed by the parties. The reason is that oral agreements are unenforceable in court if they cover more than a year (the legal jargon is that they violate the "statute of frauds"). This is the same reason why verbal leases for land rental can only be for one year at a time (though they can be renewed any number of times, for one year at a time).

So we lawyers recommend you get the fencing construction and/or maintenance agreement in writing, have both landowners (and their spouses) sign it, and then record it against the title to both parcels of land at the local county recorders office.

If you fail to do the writing/signed/recording steps, what you have is an unenforceable contract. Neither landowner nor their buyers, heirs, or donees will have legal rights to enforce verbal fencing agreements. The reason you should get the signed written fencing agreement recorded is to bind future buyers, heirs, and donees to the fencing agreement.

You should be able to get some idea of how to write up a fence agreement by going to the county recorders office and searching their public records. But frankly few people have taken this step, instead relying upon technically unenforceable oral agreements. So this may be an occasion to work with your attorney (and your neighbor's attorney) to draft and get properly recorded a signed written fence agreement.

You would probably seek the professional expertise of your attorney if you were granting your neighbor a road, water line, or drainage ditch right on your property, right? Well, isn't a fencing agreement, especially if it's "forever (in perpetuity)," an equally important consideration worth consulting with your attorney?

For internet links to articles about fencing laws in other states (but not much is available about the importance of recorded written/signed fencing agreements), go to:

<http://aglaw.missouri.edu/fencelaws.htm>.

## **Road Easements Through Private Land**

Easements are usually expressed granted (written, signed, recorded). Written easements may have all types of specifics as to the road location, width, maintenance, duration, gates, fences, and right to delegate rights to others to use the road. But all too often the written road easement is brief and fails to cover what now is an important consideration of either the road right user or the landowner subject to the road easement.

How do you decide the issues in that situation? Well, you negotiate and reach mutual agreement (and hopefully write this up, sign it, and record it against the land). Or you will end up in court and turn it over to the jury to determine what is “reasonable.” Unfortunately, going to court is expensive in attorney costs, court costs, and time (not to mention the ill-feelings that might develop between the disputing parties). Remember that the “American rule” is that each party to a lawsuit pays his own attorney expenses (in most other countries, the losing party pays the winner’s reasonable attorney expenses).

One alternative to litigation is mediation. Disputing parties identify a mutually acceptable neutral third-party who then tries to bring together the two sides by exploring give-and-take to reach a compromise. Neither party is bound to the mediator’s suggested agreement, but if both sides decide to bind themselves, then this mediated settlement is given the finality as if it were a court decision (and is not appealable). Usually mediation is cheaper and quicker than court litigation, and there is privacy and ill-feelings are typically minimized.

You will need to see your attorney about road easement questions in Missouri. For general non-legal advice on easements, see the article “Easements in Texas” at <http://recenter.tamu.edu/pdf/422.pdf> (22 pages).

## **Injured Children and Landowner (or Tenant) Civil Liability**

This is a real can-of-worms topic, so promptly see your attorney should any person, especially a young person, be injured while on your property. It may be that the landowner (or tenant) is facing a “friendly lawsuit” as an injured visitor seeks to recover under your liability insurance policy.

One advice is to always require children to be accompanied by “an adult.” Children accompanied by an adult will be treated under “adult liability rules,” meaning the landowner (tenant) will be civilly liable for the child’s injuries only if you would have been liable for an adult’s injuries. Basically, this is more protection for the landowner (tenant).

Can a “tenant” be liable for injuries to child trespassers? Yes, because the tenant is in control of the premises. If the tenant is in exclusive control of the premises (as is the case in many leases), it is only the tenant and not the landlord who faces civil liability for injured child trespassers. So you landlords will want to check with your attorney to see that your lease

explicitly removes your from liability by restricting or forbidding your control of the premises. This doesn't have to mean the landlord can't inspect the premises.

Another recommendation to minimize liability exposure to injured children on your property is not only to have an adult accompany them but to also require the parent(s) sign a "release of liability" or "hold-harmless release." These clauses must be clearly written and understandable to the parents (and why not have the children sign as well, not as "adults" but to show they were warned as to the dangers?). This is a common practice in our society for school and non-school sports and camps. While this is not "fool-proof" protection from liability lawsuits, it is increasingly being given some respect in the courts. Probably the best reason for requiring signed liability releases is that it deters injured land entrants from suing (psychological deterrence).

Drowning in farm ponds? The courts nearly always find no liability for the deaths of minors by drowning in farm ponds. The exceptions are where there is what amounts to "hidden traps" in the ponds such as submerged dangerous objects such as water pipes or sharp objects.

For a collection of articles about landowner/tenant liability for injuries to children as well as to adult visitors, see <http://aglaw.missouri.edu/landownerliability.htm>.