Missouri’s Complex Fence Law

Presented by:

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Program Complaint Information

To file a program complaint you may contact any of the following:

University of Missouri
— MU Extension AA/EEO Office, 109 F. Whitten Hall, Columbia, MO 65211
— MU Human Resources Office, 130 Heinkel Bldg, Columbia, MO 65211

USDA
— Office of Civil Rights, Director, Room 326-W, Whitten Building, 14th and Independence Ave., SW, Washington, DC 20250-9410

Looking at Missouri’s 2 Fence Laws...

• What’s the Difference and Where does Your County Fit?

What I’ll Discuss Tonight...

• How the Optional Fence & Enclosure Act differs from the “updated general law” is
• What either law will (and won’t) do
• Try to answer any Questions any of you have

Where Missouri is at right now...

• Most of the state currently has the updated general law.
• 19 counties in the state (mostly in Northern Missouri) have the local option law.

Missouri’s Other Fence Law...
Local option Law Counties

• Bates
• Clinton
• Daviess
• Gentry
• Grundy
• Harrison
• Knox
• Linn
• Macon
• Cedar
• Mercer
• Newton
• Putnam
• Schuyler
• Scotland
• Shelby
• Sullivan
• Saint Clair
• Worth
Where Missouri is at right now...

- Chapter 272 is where the fence law statute is located. You can find it on the web too at http://www.moga.mo.gov/mostatutes/chapters/chapText272.html
- The revised general law starts at 272.010 while the local option begins at 272.210

Comparing the 2 laws...

- New General Law only if a landowner owns livestock can he/she be required to build a boundary fence.
- Optional Law if 1 landowner has a “need” for a boundary fence, then both landowners are required to contribute 1/2.

Comparing the 2 laws...

- New General Law the definition of livestock can be an issue such as:
  ~ is 1 horse livtk?
  ~ can I run wire 25 feet off property line and not contribute?
- Optional Law

Comparing the 2 laws...(con’t)

- New General Law if both landowners have livestock, they are to meet and within a “reasonable” time build or repair the boundary fence.
- Optional Law The landowner can give notice to the other(s) as to their “need” for a boundary fence, within 90 days the other is expected to “do this” or face legal action.

Comparing the 2 laws...(con’t)

- New General Law There is NO specific legal recourse if one landowner refuses to build their portion of the fence.
- Optional Law A specific legal recourse is in place if 1 landowner refuses to build their portion, how good it is depends in large part to the judge.

Comparing the 2 laws...(con’t)

- New General Law There is a specific legal remedy for a landowner(s) who puts livestock against a neighbor’s fence later. How well it’s working is subject to interpretation (not very well according to most).
Comparing the 2 laws...(con’t)

**New General Law**

The definition of a legal fence is now “wire or wood at least 4 foot high with posts no more than 12 feet apart”. Other types of fences must be approved by the judge.

**Optional Law**

“A legal fence is 4 barbed wire or the equivalent with posts no farther than 12 feet apart with no stays & 15 feet apart with one stay”.

Comparing the 2 laws...(con’t)

**New General Law**

If more than a legal fence is required (woven wire, etc.) you are still required to pay for ½ of a legal fence.

**Optional Law**

same as new law

Comparing the 2 laws...(con’t)

**New General Law**

The part of the fence to build/maintain is the right 1/2 as you face each other at the midpoint of your boundary fence.

**Optional Law**

The part of the fence to build/maintain is traditionally the right 1/2 as you face each other at the midpoint of your boundary fence.

Comparing the 2 laws...(con’t)

**New General Law**

You do not have the legal right to remove a fence without your neighbor’s okay. You can remove brush/trees that are obstructing the fence.

**Optional Law**

SAME AS NEW LAW

Comparing the 2 laws...(con’t)

**New General Law**

You have the implied right to go onto your neighbor’s property to repair your or his/her portion of the fence.

**Optional Law**

You have the implied right to go onto your neighbor’s property to repair your or his/her portion of the fence.

Fences & Adverse Possession...

**New General Law**

Many people run into adverse possession issues on a fence line. It is a legal term that essentially says if a fence has been in a location for more than 10 years, a new owner may not be able to move it if the neighbor refuses.

**Optional Law**

SAME AS NEW LAW

Fences & Adverse Possession...

• Many people run into adverse possession issues on a fence line. It is a legal term that essentially says if a fence has been in a location for more than 10 years, a new owner may not be able to move it if the neighbor refuses.

• It is a legal process (has to go to court) but it is critical to know a survey alone typically does not overturn it if requirements are met.
Fences & Adverse Possession...

- Evidence to argue adverse possession include survey, photos, witnesses, use of land during period (timber cut, hunting, etc.).
- If both landowners agree, a simple phrase can be put on both deeds to avoid this problem.
- You can contact me if you want to find out more on this or go to http://extension.missouri.edu/p/G811

Animal Trespass Issues...

- The other area where there are major differences is that of animal trespass.
- Senate Bill 844 which became law in 2016 changed animal owner liability greatly.

Comparing the 2 laws...(con’t)

- **New General Law**
  
  272.030 states “only in cases where livestock get through a lawful fence and do damage, the livestock owner is liable only in cases of negligence” on their part.

- **Optional Law**
  
  There is **nothing** in the current statute related to this since in these counties, damages are not legally allowed with a boundary fence.

Comparing the 2 laws...(con’t)

- **New General Law**
  
  If livestock get out through a non-boundary fence (road, creek), you may be able to receive double damages and distraint them after the 1st trespass.

- **Optional Law**
  
  same as general law.

Comparing the 2 laws...(con’t)

- **So what constitutes negligence?**
  
  ~ fence that doesn’t meet minimum legal requirements
  ~ water gaps not repaired in a “timely” manner
  ~ livestock not fed or cared for as law expects
  ~ animals that get out regularly (bull, etc.)

Comparing the 2 laws...(con’t)

- **So what about the “stray law”?**
  
  ~ chapter 272 covers fence law; chapter 271 covers stray animals
  ~ 271 covers strays that get out and is considered obsolete although some folks quote and use parts of it
  ~ chapter 270 covers animals running at large further confusing this issue
Comparing the 2 laws...(con’t)

- **New General Law**
  - railroads are unique situation.
  - Statute 389.650 requires them to maintain their fences from livestock.

- **Optional Law**
  - same as general law.

Law Interpretation Issues...

- Another cause for potential cloudiness is that the law is subject to a lot of interpretation by the county’s Associate Circuit Judge.
- Add attorneys & law enforcement too here.

Fence Cases & Court...

- Cases below $5,000 can be heard in small claims court. This can be done without an attorney if you wish.
- Again, remember these laws are still subject to a lot of interpretation.

Miscellaneous issues...

- Keep in mind that the Local Option can be voted on more than once.
- If a landowner refuses to do their part, it is extremely difficult to force them under either law.
- If voted in, it will require education on the part of your judge and attorneys too!

If You Have Further Questions...

- You can contact me either by...
  - phone: (660) 947-2705
  - fax: (660) 947-3006 (call 1st)
  - e-mail: koenenj@missouri.edu
- or you can call your county office and they can contact me.

In Conclusion...

- Can I answer any additional questions anyone has?
- I will answer specific questions. However, remember that the law can be interpreted different ways.