

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 | • Mercer |
| • Clinton | • Newton |
| • Daviess | • Putnam |
| • Gentry | • Schuyler |
| • Grundy | • Scotland |
| • Harrison | • Shelby |
| • Knox | • Sullivan |
| • Linn | • Saint Clair |
| • Macon | • Worth |
| • Cedar | |




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

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Comparing the 2 laws...

<ul style="list-style-type: none"> New General Law <p><u>only</u> if a landowner owns livestock can he/she be required to build a boundary fence.</p>	<ul style="list-style-type: none"> Optional Law <p>if 1 landowner has a “need” for a boundary fence, <u>then both</u> landowners are required to contribute 1/2.</p>
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Comparing the 2 laws...

<ul style="list-style-type: none"> New General Law <p>the definition of livestock can be an issue such as:</p> <ul style="list-style-type: none"> ~ is 1 horse lvtk? ~ can I run wire 25 feet off property line and not contribute? 	<ul style="list-style-type: none"> Optional Law
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Comparing the 2 laws...(con’t)

<ul style="list-style-type: none"> New General Law <p>if <u>both</u> landowners have livestock, they are to meet and within a “reasonable” time build or repair the boundary fence.</p>	<ul style="list-style-type: none"> Optional Law <p>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.</p>
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Comparing the 2 laws...(con’t)


<ul style="list-style-type: none"> New General Law <p>There is NO specific legal recourse if one landowner refuses to build their portion of the fence.</p>	<ul style="list-style-type: none"> Optional Law <p>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.</p>
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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).

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Comparing the 2 laws...(con't)

<ul style="list-style-type: none"> • <i>New General Law</i> <p>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.</p>	<ul style="list-style-type: none"> • <i>Optional Law</i> <p>"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".</p>
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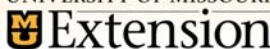
Comparing the 2 laws...(con't)

<ul style="list-style-type: none"> • <i>New General Law</i> <p>If more than a legal fence is required (woven wire, etc.) you are still required to pay for ½ of a legal fence.</p>	<ul style="list-style-type: none"> • <i>Optional Law</i> <p><i>same as new law</i></p>
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Comparing the 2 laws...(con't)

<ul style="list-style-type: none"> • <i>New General Law</i> <p>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.</p>	<ul style="list-style-type: none"> • <i>Optional Law</i> <p>The part of the fence to build/maintain is <u>traditionally</u> the right 1/2 as you face each other at the midpoint of your boundary fence.</p>
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Comparing the 2 laws...(con't)

<ul style="list-style-type: none"> • <i>New General Law</i> <p>You have the legal right to go onto your neighbor's property to repair your or his/her portion of the fence.</p>	<ul style="list-style-type: none"> • <i>Optional Law</i> <p>You have the <u>implied</u> right to go onto your neighbor's property to repair your or his/her portion of the fence.</p>
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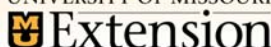

Comparing the 2 laws...(con't)

<ul style="list-style-type: none"> • <i>New General Law</i> <p>You <u>do not</u> have the legal right to remove a fence without your neighbor's okay. You can remove brush /trees that are obstructing the fence.</p>	<ul style="list-style-type: none"> • <i>Optional Law</i> <p><i>SAME AS NEW LAW</i></p>
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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.

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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>

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Animal Trespass Issues...

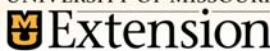
- The other area where there are major differences is that of animal trespass.
- Senate Bill 844 which became law in 2016 changed animal owner liability greatly.



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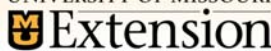
Comparing the 2 laws...(con't)

<ul style="list-style-type: none"> • <i>New General Law</i> <p>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.</p>	<ul style="list-style-type: none"> • <i>Optional Law</i> <p>There is <u>nothing</u> in the current statute related to this since in these counties, damages are not legally allowed with a boundary fence.</p>
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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.)

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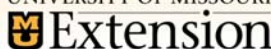
Comparing the 2 laws...(con't)

<ul style="list-style-type: none"> • <i>New General Law</i> <p>If livestock get out through a non-boundary fence (road, creek), you may be able to receive double damages and detain them after the 1st trespass.</p>	<ul style="list-style-type: none"> • <i>Optional Law</i> <p><u>same as general law.</u></p>
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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

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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.

