Iowa Fence Law

July 11, 2024

Disclaimer

CALT does not provide legal advice. Any information is not intended to be a substitute for legal services from a competent professional. Any opinions, findings, conclusions or recommendations expressed in the material do not necessarily reflect the views of Iowa State University.
Contact Information

Jennifer Harrington
Staff Attorney
ISU Center for Agricultural Law and Taxation
515-509-0581
JenHar@iastate.edu

Today

• Overview of Iowa’s Fencing Law
• Fence Agreements
• Fencing Disputes and the Role of the Fence Viewers
• Boundary Disputes & Fences
History of Iowa’s Fences Statute

- Iowa “Fences” Statute, Iowa Code chapter 359A.
- Iowa’s fencing statute date from the state’s earliest times, predating the Iowa Code of 1851.
- Authorized by territorial legislation.
- “It is difficult to imagine a more deeply rooted Iowa statutory provision.” Gravert v. Nebergall, 539 N.W.2d 1184 (Iowa 1995).

Rights and Duties

- Iowa landowners have no common law duty to fence their property.
- No requirement, initially, to fence property.
- Instead, Iowa Code 359A.1A imposes a conditional statutory duty:
  - “Respective owners of adjoining tracts of land shall upon written request of either owner be compelled to erect and maintain partition fences, or contribute thereto, and keep the same in good repair throughout the year.”
Written Request

- A written request “triggers” the duty of an adjoining landowner.
- Dear Neighbor…

The conditional duty has nothing to do with livestock.
- A landowner owning no livestock can require an adjacent owner to erect and maintain a partition fence.
- A landowner owning livestock can require his non-livestock-owning neighbor to contribute and maintain the partition fence.
Does it really say that?

- Iowa’s partition law has long been controversial.
- **Question**: Is it fair to make a neighbor pay for the cost of fencing that someone else wants?

Iowa Supreme Court Says “Yes”

In 1995, the Iowa Supreme Court declared the law to be constitutional.
Gravert v. Nebergall

- Plaintiffs owned 12 acres of land within the city limits. Three acres were residential and nine were leased for crop farming.
- The defendants were adjacent landowners who raised miniature horses.
- Defendants’ land was outside of the city limits. The line between the parties’ properties was in the city boundary.
- The defendants requested that the plaintiffs contribute to half the cost of a partition fence.

Gravert v. Nebergall

- The plaintiffs refused to contribute to the fence, arguing that it would be unfair since they did not have livestock.
- The fence viewers divided responsibility for the fence between the parties, and the plaintiffs challenged the ruling.
- The district court found the statute unconstitutional, as applied to the plaintiffs because it exceeded the state’s police power.
  - Police power refers to the legislature’s broad, inherent power to pass laws that promote the public health, safety, and welfare.
Gravert v. Nebergall at the Iowa Supreme Court

- On appeal, Supreme Court reversed:
  - While a state cannot use its police power to benefit a particular class of people (as opposed to the public generally), this statute serves a broader purpose of mediating boundary, fence, and trespass disputes.
  - The statute was constitutional, as applied to the plaintiffs, because statute benefits all landowners, even if livestock owners are the primary beneficiaries.

- The statute was not unduly oppressive, but provides benefits to the non-livestock owner as well:
  - Freedom from intrusion by livestock,
  - Freedom from trespassing neighbors,
  - Elimination of devil's lanes,
  - Diminution of lawsuits,
  - Discouragement of litigation dealing with boundaries,
  - Increase in value of all land by fostering agriculture.

- Any unfairness in the law is political, not constitutional. Legislature can change, not judiciary.
BACK TO THE STATUTE

Iowa Code 359A.1A
“Respective owners of adjoining tracts of land shall upon written request of either owner be compelled to erect and maintain partition fences, or contribute thereto, and keep the same in good repair throughout the year.”

“Contribute thereto”

- Cost and burden shared equally.
- Duty of fence viewers (if there is a dispute) is to apportion the shared costs of partition fences in order to equalize the burden.
- “Right Hand Rule”
  - Where two adjoining landowners facing each other at the center of the fence along the shared property boundary, each agree to build the right half from the center to the end of the property line.
  - Commonly used, but not codified by law.
“Partition Fence”

- Fence located on border between two adjacent properties held by different owners.
- Does not include:
  - Fences not on border
  - Roads adjacent to property
  - Article on website “Fences and the Road Right-of-Way”
  - Railroads
    - Iowa Code § 327G.3.
    - “The statutory provision as to partition fences does not apply to railroads.” Henry v. Dubuque & R.R. Co., 2 Iowa 288 (1855).

STATUTORY FENCES
Lawful Fence – Six Options

1. **Three rails** of good substantial material fastened in or to good substantial posts.

2. **Three boards** not less than six inches wide and three-quarters of an inch thick, fastened in or to good substantial posts.

3. **Three wires, barbed** with not less than thirty-six iron barbs of two points each, or twenty-six iron barbs of four points each, on each rod of wire or of **four wires, two thus barbed and two smooth**, the wires to be firmly fasted to posts not more than two rods apart, with not less than two stays between posts, or with posts not more than one rod apart without such stays, the top wire to be not more than fifty-four nor less than forty-eight inches in height.

Lawful Fence

4. **Wire** either wholly or in part, substantially built and kept in good repair, the lowest or bottom rail, wire, or board not more than twenty nor less than sixteen inches from the ground, the top rail, wire, or board to be between forty-eight and fifty-four inches in height and the middle rail, wire, or board not less than twelve nor more than eighteen inches above the bottom rail, wire, or board.

5. A fence consisting of four parallel, coated steel, **smooth high tensile wire** which meets requirements adopted by ASTM (American society for testing and materials) international, including but not limited to requirements relating to the grade, tensile strength, elongation, dimensions, and tolerances of the wire. The wire must be firmly fastened to plastic, metal, or wooden posts securely planted in the earth. The posts shall not be more than two rods apart. The top wire shall be at least forty inches in height.

6. **Any other kind of fence which the fence viewers consider to be equivalent** to a lawful fence or which meets standards established by the department of agriculture and land stewardship by rule.
Lawful Fence

“The term ‘legal fence’ as defined in the statute is not a prescription, however, for how every partition fence must be constructed or what fence viewers must require, but sets forth a minimum standard for a ‘legal fence.’ ”
Hopkins v. Dickey, 909 N.W.2d 230 (Iowa App. 2017)

Duty to Keep a “Tight Fence”

- Any landowner can build a “tight fence” and then require adjoining landowner to do the same.
  - Iowa Code §359A.19
- If adjoining landowners or occupants of land use the land for pasturing sheep or swine, each must keep their portion of the partition fence to restrain the animals.
  - Iowa Code §359A.21
Tight Fence

- All tight fences shall consist of:
  - Not less than **twenty-six inches of substantial woven wire** on the bottom, with **three strands of barbed wire** with not less than thirty-six barbs of at least two points to the rod, on top, the top wire to be not less than forty-eight inches, nor more than fifty-four inches high.
  - Good **substantial woven wire not less than forty-eight inches** nor more than fifty-four inches high with **one barbed wire** of not less than thirty-six barbs of two points to the rod, not more than four inches above said woven wire.
  - **Any other kind of fence which the fence viewers consider to be equivalent** to a tight partition fence or which meets standards established by the department of agriculture and land stewardship by rule as equivalent to a tight partition fence.

DIFFICULT TERRAIN
Unfeasible Fence

In 2018, a new law allows fence viewers to determine after a site evaluation, that a partition fence is “unfeasible.”

- Iowa Code § 359A.4

Topography;  
Terrain;  
Terraces;  
Land slope;  
Unstable ground;  
The presence of surface water, drainage systems, sinkholes, or water wells;  
Easements;  
Utilities; or  
Available area.
Unfeasible Fence

- Once the fence viewers determine that it is unfeasible to build a portion or all of the fence, they will seek to have the parties agree to an alternative.
- If this does not occur within 60 days, the viewers will order the fence to be placed at the “most feasible location on the property of the owner who initiated the controversy that is closest to the adjoining owner’s property boundary.”
Initiating a Complaint

- If a landowner does not respond to a written request to erect or maintain a partition fence, the complaining landowner can turn to the fence viewers.
- Fence viewers have the power to determine controversies arising under chapter 359A.
- Fence viewers are the township trustees. Iowa Code § 359.17(1).
  - Three or five registered voters of the township.

Initiating a Complaint

- The complaining landowner must make a request to the fence viewers to resolve the dispute.
  - Filed with the township clerk.
  - Clerk consults Township Trustees and sets time and place of hearing.
- The fence viewers then give 5 days written notice of the hearing to all adjoining landowners liable for the erection, maintenance, rebuilding, trimming, or cutting back or repairing of a partition fence, or to pay for an existing hedge or fence.
  - Notice served pursuant to Iowa Rules of Civil Procedure.
- The notice gives the time and place of meeting to hear and determine the matter.
  - Preferred meeting spot is at the fence in controversy.
Hearing

- Fence viewers meet (with the parties at the site) and then issue a written order setting forth:
  - The obligations, rights and duties of the respective parties in such matter, and assign to each owner the part which the owner shall erect, maintain, rebuild, trim, or cut buck, or pay for, and fix thereof, and prescribe the time within which the same shall be completed or paid for, and, in case of repair, may specify the kind of repairs to be made.
  - Two fence viewers need to be present, ideally all three will be.

Order

- All orders and decisions made by the fence viewers shall be in writing, signed by at least two of them, and filed with the town clerkship.
- The township clerk then certifies a copy of the order and the notices to the county recorder who records it in the name of each adjoining landowner.
- The order is binding on the makers, heirs, and subsequent grantees.
Appeal

- Either party may appeal the trustee’s order to the district court by filing a notice of appeal with the clerk of court **within 20 days** after the rendition of the order.
- Appealing party must file an appeal bond in an amount approved by the township clerk.
- The township clerk must file the original papers with the district court, certifying them as original.
- After the appeal concludes, the clerk certifies the judgment to the county recorder.

Failure to Follow Order

- If one party fails to follow the order by the deadline, then complaining party (one who is upset deadline isn’t followed) will have to deposit money for the work with fence viewers.
- 30 days after the order deadline, the fence viewers will arrange for work to be done and set fence cost (if not already set in order).
- 10 days after the cost is determined, fence viewers certify cost to treasurer who collects funds in same manner as property taxes.
- Person repaid after treasurer collects.
Fence Viewers: Power and Conflicts of Interest

- If there is a “fence controversy” then fence viewer process must be utilized before going to court.

- If a fence viewer has a conflict of interest in the matter, she is disqualified from participating. **Conflict of interest exists when the fence viewer or a person related to the fence viewer has an interest in the land.**
  - Includes spouse, children, parents, aunts, uncles, nieces, nephews.
  - Or their spouses.
  - Also includes “Business Associates.”
    - Anyone who has an interest in the same business entity as the fence viewer.

- Fence viewers do not have the authority to resolve boundary disputes.
**Written Fence Agreements**

- The adjoining owners **may, in writing, agree** upon the portion of partition fences between their lands which shall be erected and maintained by each, which writing shall describe the lands and the parts of the fences so assigned, be signed and acknowledged by them, and **filed and recorded** in the office of the recorder of deeds of the county or counties in which they are situated.

**Iowa Code § 359A.12**

---

**Written Fence Agreements Specifics**

- Must be in writing.
- Must include legal description of land.
- Must state the portion of the partition fence that will be erected and maintained by each owner.
- Must describe each party’s assigned portion of the fence.
- Must be signed and acknowledged by the landowners and recorded with the county recorder.

**THESE ARE THE MINIMUMS, CONSULT AN ATTORNEY TO ENSURE DRAFTED PROPERLY.**
Effect of Fence Agreement

- A recorded fence agreement is binding on the makers, heirs, and subsequent grantees.
- It is enforceable in district court.
  - Sue for breach of the agreement.

Cautions

- Think about terrain of territory and its impact on cost. Equal distance may not be equitable.
- Make sure that fence is in proper place or you could inadvertently create a boundary by acquiescence.
- Consider placing time limits in the agreement (work must be completed by such a date).
- Remember this will be binding forever unless both parties agree to change it. Don't agree to a bad deal (future uses of property could impact type of fence you want).
Boundaries

- The process described above is for when neighbors agree about where the boundary line is located.
- Fence does not need to be on the line.
  - “The provisions concerning partition fences shall apply to a fence standing wholly upon one side of the division line.” 359A.17.
- If don’t agree where boundary is or where fence should stand, then in a different area of law.
Boundaries

- Iowa Code Chapter 650
  - §650.1 – Court empowered to resolve boundary disputes.
  - §650.14 – Boundary by Acquiesces
    - “If it is found that the boundaries and corners alleged to have been recognized and acquiesced in for ten years have been so recognized and acquiesced in, such recognized boundaries and corners shall be permanently established.”

Boundary By Acquiescence

- If parties acquiesce or “mutually recognize” for a period of at least 10 years that a fence is the boundary line between them, it becomes the boundary line.
- This also applies to previous property owners who accept the fence as the boundary line.
- Merger of parcels can cancel BBA
- Acquiescence can be inferred from “the silence or inaction of one party who knows of the boundary line claimed by the other and fails to dispute it for a ten-year period.”
Boundary By Acquiescence

- “The reciprocal recognition of and acquiescence in a fence as marking the boundary through occupation and exercise of exclusive dominion thereto by the respective adjoining owners for a period of 10 years raises a conclusive presumption of an agreement upon the line so marked as the boundary.”

COURT REMEDIES
Chapter 650 Procedure

- Petition in district court describing land involved and asking boundary to be established. §650.5
- Court appoints commission of 1 (or more) of “disinterested licensed professional land surveyors” who will locate boundaries.
  - One party can plead the other “acquiescence” to different boundary to commission.
  - Requires proof showing both owners agreed fence/other markers were boundary.
- Within 60 days after appointment, commission gives report to court.
- Parties have 20 days after report is given to court to file any exceptions.
- Court then rules on report. Costs are apportioned “as the court deems just.”

Chapter 649 Procedure

- **Quiet title.** A court action to determine who has title to land.
- Optional: Serve a demand for quitclaim. § 649.5. Must have certain requirements.
  - Letter recipient: 20 days to comply, or court could order sender’s attorney fees paid by recipient.
- Additional claims:
  - Boundary by Acquiescence, Adverse Possession, Prescriptive Easement, Estoppel
  - Trespass, Encroachment
COURT CASE EXAMPLES

Boundary by Acquiescence Established

- Historical owners of properties for decades recognized invisible line between phone box and a red post as the boundary line.
- Neighbor and prior owners testified for plaintiff, saying that all owners had recognized this boundary.
- A split-rail fence separated the properties on the same “line”; but the fence had been in place less than 10 years.
Boundary by Acquiescence Established

- **YES!**
- “A fence of some other consistently solid barrier is not necessary to establish the boundary line.”
- **BUT** “The boundary must be definitely marked in some manner.”
  - Landmarks (phone box and red post) and line between was enough.
  - Many witnesses that all recognized line, including neighbor across street.
Fence Marks Boundary?

- In a 2020 case, a fence separated a dairy farmer from his neighbor, but was not on the boundary line.
  - This left about 1.3 acres of the neighbors’ land on the opposite side of the fence.
- After a survey, the parties disagreed on the boundary line. Neighbor brings lawsuit.
- In 2008, the previous owner of the neighbors’ land sent a letter to the dairy farmer’s father.
  - The letter granted a “license” to the farmer to continue to farm the land, but stated that the fence was merely a “barrier,” not the “boundary.”
• Fence is a Barrier, Not the Boundary
  • Court said there was **not enough** evidence that parties accepted the fence was partition fence.
    • 2008 letter shows that both neighbors did not agree fence was boundary.
Recent Boundary Case with Fence

- Relevant Facts:
  - In 1959, the Wittings bought a farm property which included a house that was enclosed by a fence.
  - In 1976, the Wittings partitioned the house from the rest of the farmland and sold the house property.
  - Between 1998 and 2001, one of the property owners removed the fence east of the house.
    - Left only a corner post.
  - In 2019, the Schinstock-McConnels purchased the property.
    - Hired a surveyor who determined that the eastern boundary line was thirty-three feet from the fence post.
    - Made new markers from survey.
**WITTING V. SCHINSTOCK-MCCONNELL, NO. 22-1301 (IOWA CT. APP. AUG. 9, 2023).**

- **Plaintiffs: Boundary by Acquiescence**
  - Court: Boundary established in 1986 (ten years after first sale).

- **But no fence?**
  - Even after the fence was torn down, continued to farm within a few feet of the former fence.
  - + fence post was still there.
  - Line was known.

---

**RESOURCES**

- CALT - Iowa Fence Requirements: A Legal Review
- Check County Website
  - Clayton County – Fence Viewing Forms
  - Johnson County – The Fence Dispute Resolution Process
  - Winneshiek County - Township Trustees Fence Viewing Information & Forms
- County Auditor
  - Who township clerk & trustees are.
QUESTIONS?