



Fencing

Section 4 – Liability and Tort Law

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Note: *This publication is intended to provide general information about legal issues. It should not be cited or relied upon as legal authority. State laws vary and no attempt is made to discuss laws of states other than Oklahoma. For advice about how these issues might apply to your individual situation, consult an attorney.*

Am I required to fence my land?

If you want the land unenclosed and used as a commons by the public, you can leave your land without a fence. However, if you want to use it for any other purpose, you are required to contribute to the partition fences around the land (partition fences are fences that separate your land from other landowners' land). Such fences must be kept in good repair throughout the year unless both landowners along the fence agree otherwise in writing. Willful failure to keep domestic and exotic animals properly confined is a misdemeanor in Oklahoma.

What does the law say about how fences should be constructed?

According to Oklahoma state law, the following qualify as a "lawful fence":

Rail Fence

- Rail fence must be constructed of three rails of good substantial material, or three boards not less than six inches wide and three-quarters of an inch thick.
- The rails or boards need to be fastened to good substantial posts not more than 10 feet apart where rails are used, and not more than eight feet apart where boards are used.
- The top rail or board should be only 54 inches in height and the bottom board 16 to 20 inches above the ground.

Wire Fence

- Barb wire fence must have at least three barb wires, or four wires (two of which must be barbed).
- The wires need to be firmly fastened to posts not more

than two rods apart, if two stays are used between the posts. The posts cannot be more than one rod apart without such stays (1 rod = 16 1/2 feet).

- The top wire of the fence cannot be less than 54 inches in height, or more than 58 inches in height. The bottom wire cannot be more than 20 or less than 16 inches from the ground.

Please note: Another kind of fence may also qualify, if it is deemed equivalent by a group of fence viewers to a fence built with the above specifications (see definition of fence viewers in the following section). Still, the lowest or bottom rail, wire, or board shall not be more than 20 or less than 16 inches from the ground, and the fence must be 54 inches in height.

A neighboring landowner refuses to help keep the fence between us in good repair. What can I do?

First of all, try to avoid such conflicts by conferring with neighboring landowners and establishing written agreements about how you will divide the responsibility for maintaining partition fences. A division of fence that is written and filed with the county clerk is binding not only on the present owners of the land, but any future owners as well. This may help prevent problems.

If a conflict arises between you and another landowner regarding obligations to build or maintain fence (regardless of whether a written agreement exists), Oklahoma law says that the matter should be addressed by a group of *fence viewers*.

The fence viewers are a group of disinterested freeholders (landowners) who arbitrate a fencing conflict. Each of the two parties in the conflict appoints a viewer, and the two viewers they appoint are responsible for appointing a third viewer. If anyone involved refuses to appoint someone for three days after they are requested to do so, the person requesting that viewers be appointed should notify the county sheriff who will appoint someone to fill the vacant position.

The fence viewers are paid one dollar each per day for their work, and the cost is to be paid by the parties in the conflict. The fence viewers will inquire into the conflict, assign each landowner a portion of the responsibility for building or maintaining the fence, and allot a time in which the work should be completed.

If the other party involved in the conflict refuses to do his/her share of the work, you can repair the fence where it is deficient. If your work passes the inspection of the fence viewers, you can demand payment of the appropriate expenses from the other landowner. If he/she still refuses to pay within a month of your request, you are entitled to pursue civil action to recover the expenses, plus one percent per month interest.

Procedure for Resolving a Fencing Conflict

1. If you have a binding written agreement for division of the fence with a neighboring landowner or any other enforceable legal instrument that defines responsibilities for fencing, your neighbor is compelled by law to do his/her duty as defined by such agreements.

2. If the other landowner still refuses to do his/her share of maintenance on the fence, ask him to appoint a fence viewer. You will also need to appoint a fence viewer, and the two appointed will appoint a third viewer. If anyone refuses to appoint a fence viewer for three days after being requested to do so, notify the county sheriff (who will appoint one for him or her).
3. The fence viewers examine the situation and determine what portion of the responsibility for building or maintaining the fence falls on each party.
4. If the other landowner refuses to do the share of work assigned to him/her by the fence viewers, you can make the needed repairs. If the work meets the inspection of the fence viewers, you can bill the other landowner for the appropriate expenses.
5. If the other landowner refuses to pay his/her portion of the expenses within a month, you may file a civil suit to recover them, plus one percent interest per month.

Legal references for this topic:

Title 4 Oklahoma Statutes, sections 98, 99, 139 *et. seq.* – the Oklahoma Herd Law

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