

Missouri's Fencing and Boundary Laws: Frequently Asked Questions

Missouri has two fence laws: the general fence law (updated Aug. 28, 2001) and the local option fence law. In addition, Missouri law addresses special situations of property bordering a road, a railroad, or a body of water. Landowners need to be aware of these special situations and of which fence law is in place in counties where they own land. This guide answers common questions about these laws.

The information in this guide is for educational purposes only and is not a substitute for competent legal advice.

General information

Which Missouri counties have opted out of the general fence law?

The following 19 counties currently have opted out of the general fence law and are subject to the local option fence law:

Bates	Cedar	Clinton
Davies	Gentry	Grundy
Harrison	Knox	Linn
Macon	Mercer	Newton
Putnam	Schuyler	Scotland
Shelby	St. Clair	Sullivan
Worth		

Gentry and Worth counties voted to adopt the local option since the general law was updated in 2001, and Cedar County adopted the option law in 2015. The other 16 counties voted before then, with Macon being the last in 1986. All other Missouri counties are subject to the general fence law. (See Figure 1.)

Why have so many northern Missouri counties opted out?

The local option fence law, which is patterned after laws in Iowa and other Midwestern states, increases livestock

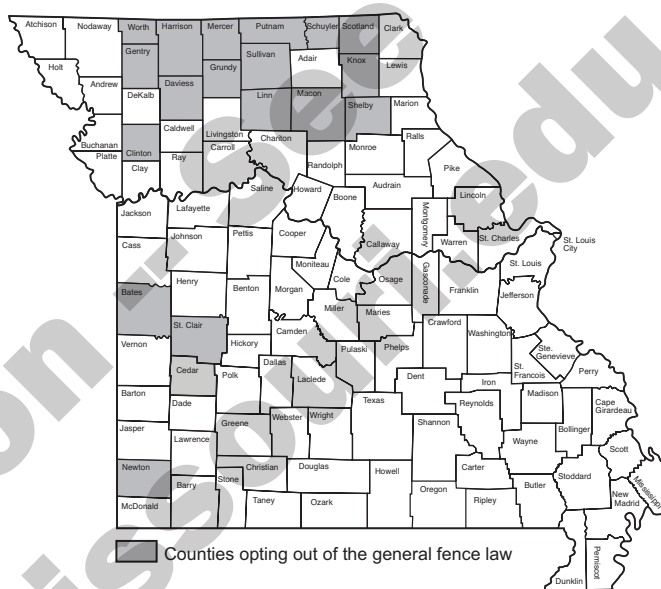


Figure 1. Many northern Missouri counties have opted out of the general fence law in favor of the more livestock-owner-friendly local option law.

owners' rights. The counties that have opted out of the general law are generally strong livestock counties.

Legal responsibility

Who is legally responsible for building and maintaining a boundary (between two or more landowners) fence?

General fence law

Chapter 272 of the Missouri Revised Statutes (RSMO 272.010 to 272.190), where the law is located, states that the livestock owner alone is legally responsible for building and maintaining a fence to enclose the livestock. When adjoining landowners or their renters own livestock, each is responsible for his or her half of the boundary fence for as long as they both run livestock against the field or enclosure.

Local option fence law

RSMO sections 272.210 to 272.370 state that when one landowner requires a boundary fence, both landowners are legally responsible for their portion of the fence. It does not mention livestock ownership, although it is presumed.

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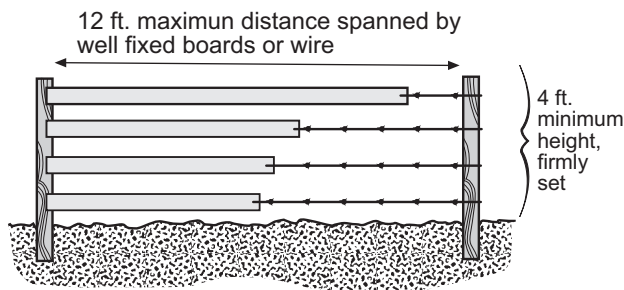


Figure 2. Example of fence required by general fence law.

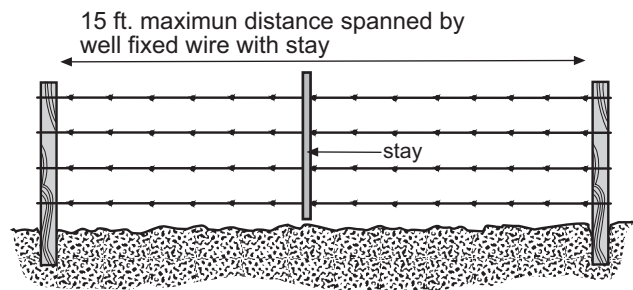


Figure 3. Example of fence that meets local option fence law requirements.

Nonboundary fences

Regardless of a county's fence law, in cases of property lines along roads (from interstate highways down to township gravel or dirt roads) and boundaries along a water body, livestock owners are responsible for enclosing their animals.

Fences along railroads

Chapter 389, which contains provisions specific to railroad properties, requires the railroad company or corporation to build and maintain the fence along the railroad right-of-way.

How is "livestock owner" defined in the updated general fence law?

In general law counties, a person who has livestock in a field at any time during the year is considered a livestock owner and is required to have a fence. One head would qualify; cattle grazing corn stalks for 25 days qualify. An owner could possibly put a hot wire or fence 10 feet or more off the property line, but this could lead to an adverse possession issue (see *Boundary lines and adverse possession* section).

What if my neighbor puts livestock against the boundary fence after I have built it?

This issue relates only to general fence law counties as livestock ownership doesn't matter in local option counties. The law provides that the livestock owner who pays for the fence can have the construction costs — materials, labor and possibly dozing — recorded against both deeds by the associate circuit judge. If the other landowner later places livestock against the fence, he or she is to reimburse the person who built the fence for half of the recorded costs.

Unfortunately, this portion of the law has not worked well for three reasons. First, no specific documents are in place to guide judges in these cases. Second, the judge must determine if the costs given by the landowner are reasonable, and most judges have no agricultural background or knowledge. Finally, this state has a tradition, especially in counties south of the Missouri River, of allowing only lawyers to enter an associate circuit judge's office. Although no law limits entry, this custom is followed frequently and prevents a landowner from presenting fence cost documentation or discussing the situation directly with the judge without the benefit or the cost of an attorney.

What portion of the fence am I required to maintain?

General fence law

If you and your neighbor both have livestock, face each other at the midpoint of your boundary fence: the half to your right is your responsibility and the half to your left is your neighbor's. Any other agreed-upon division must be put in writing and recorded* in all counties that the fence is in.

Local option fence law

The law does not specify which portion of the fence is each landowner's responsibility. Traditionally, if you and your neighbor face each other at the midpoint of your boundary fence, the half to your right is yours and the half to your left is your neighbor's, though in some parts of Schuyler county, the opposite is the tradition. In these counties, it may be even more crucial to have something in writing and recorded due to this situation.

Aren't I responsible for only the part of the fence where the wire is on my side of the posts?

Nothing in the law relates to this or other common misconceptions about fence responsibility. To protect yourself, follow only what the law says unless you have a different agreement that is in writing and has been recorded.*

Legal fence definition

What is a legal fence in Missouri?

General fence law

"A fence consisting of posts and wire or boards at least 4 feet high which is mutually agreed upon by adjoining landowners or decided upon by the associate circuit court of the county is a lawful fence. All posts shall be set firmly in the ground not more than 12 feet apart with wire or boards securely fastened to such posts and placed at proper distances apart to resist horses, cattle and other similar livestock" (RSMO 272.020). (See Figure 2.)

Local option fence law

A lawful fence is "a fence with not less than four boards per 4 feet of height; said boards to be spaced no farther apart than twice the width of the boards used fastened in

or to substantial posts not more than 12 feet apart with one stay, or a fence of four barbed wires supported by posts not more than 15 feet apart with one stay or 12 feet apart with no stays, or any fence which is at least equivalent to the types of fences described herein” [RSMO 272.210(1)]. “Stays” are vertical supports that are attached to each horizontal wire of a fence. (See Figure 3.)

If my neighbor needs a more substantial fence, do I have to pay for it?

If a neighboring land- or livestock owner needs a fence above the legal definition, such as woven wire or a 15-foot deer fence, you are required to pay only what your portion of a legal fence would cost. Anything above that cost is your neighbor’s responsibility.

If my neighbor wants to doze out the old fence and build a new one, but I don’t, do I have to allow it?

This question brings up several potentially separate issues. First, the tradition in Missouri is that 10 feet on each side of the boundary fence would be cleared before putting in a new fence, but this is not required in the statutes. It is, however, a good idea from a fence (making certain the new fence doesn’t get damaged from falling trees or limbs) and liability standpoint (see *Liability concerns* section). Second, does the current fence meet the legal definition and maintain livestock? If you cannot agree on this, then the associate circuit judge can appoint three disinterested parties to decide. Finally, the state law does not address the potential issue of an individual not having the funds to build a new fence at the time it is needed.

Boundary lines and adverse possession

Can I just move my fence if a survey of my property shows that the current fence is not on the actual boundary line?

In Missouri as in other states, a boundary fence that has been in place for 10 or more consecutive years can, in effect, become the boundary by the legal doctrine of adverse possession (RSMO chapters 516 and 527). Adverse possession means that the fence, for all practical purposes, becomes the property line, and so you cannot just remove or move the fence.

A survey does not take precedence over adverse possession. If a fence has been in place for more than 10 years, you can’t just move it. A fence that has been in place less than 10 years, however, can be moved based on a property survey. The fence has to be in place and meet the minimum definition of a legal fence for this to qualify for adverse possession. So, rotted posts in the ground or a fence lying on the ground likely will not meet that definition.

What is required for adverse possession?

In addition to the 10-year requirement, for adverse possession to take effect, the neighbor’s occupation of the land must be

- actual, which means the neighbor acted in the manner of an owner;
- open and notorious, so in plain sight and capable of being seen by the true owner and the public;
- exclusive, in that the true owner doesn’t possess it at any time during the 10-year period;
- hostile to the true owner’s rights; and
- under claim or right, in that an error in title or actual use caused it.

What is a “devil’s lane”?

Years ago, when neighboring landowners couldn’t agree on where to put a fence, they each located a fence on the adjoining side of their properties with a 10-foot lane in between. The space between such fences is called a “devil’s lane.” Although creating a devil’s lane may avoid disputes initially, it can lead to adverse possession if one of the landowners claims the lane years later.

Can I dispute adverse possession in court and prove that the survey is correct?

For adverse possession to be complete, such that the property line is legally determined, it has to be proved in court. The judge will hear evidence from both sides. What evidence is allowed is decided by the judge and might include the survey, pictures and witnesses as to how long the fence has been there. This process generally puts a new landowner in a tough legal position unless all or some of the evidence supports his or her claim.

Can my neighbor and I agree to put a fence in place on the current boundary line without risking adverse possession later?

Yes, you and your neighbor can place the fence in an agreed-upon location and, to avoid adverse possession, state that it is there “for convenience purposes only” (have an attorney draft the specific wording) on a quitclaim deed, which must be signed by you both and recorded in the county recorder’s office. Such a deed can also be recorded concerning a fence that is already in place if you and your neighbor agree.

Why won’t a judge just use a survey I have had done to decide where the boundary line is?

Surveys may be very accurate, but they are not infallible. At times, two surveyors may put a boundary line at different locations. Several locations in Missouri do not have the old quarter-mile marker pins (iron stakes in the ground), so surveyors must go from other points. Surveyors’ skills depend on whether they are certified and how much experience they have. Due to these and other reasons, some judges will not allow a survey as admissible evidence in court. Most judges will use a survey as just one piece of evidence among others, such as photos, witnesses, land use, etc.

Liability concerns

If my neighbor's livestock get onto my land, does my neighbor have to pay for any damage they cause?

General fence law

If you do not own livestock, any damage done would be the livestock owner's responsibility, with certain limitations. The livestock owner would have to be negligent in order to be held liable. Keep in mind that negligence can be subject to legal interpretations.

You could have some liability if your trees or limbs fall onto the fence, causing it to fail. That's why the 10 foot tradition is a good one. If you both own livestock, then responsibility would depend on which portion of the fence the livestock passed through, whether the fence met legal standards, and what condition the legal fence was in.

Local option fence law

According to the law, you are entitled to the repair of the portion of the fence the livestock got through but not to damages. If the livestock owner has liability coverage, however, some insurance companies may pay for actual damage, such as that done to crops.

What can happen to me if I don't maintain my part of the fence?

You open yourself up to two liability concerns if you stop maintaining your part of the fence. First, you would not be entitled to compensation for damage done by livestock getting onto your property. Furthermore, you may not be entitled to certain government payments, such as Conservation Reserve Program (CRP) assistance. Secondly, you could be liable if livestock get out onto a road or another neighbor's land and do damage. However, section 272.030 limits liability to only cases of livestock-owner negligence. An owner would likely be found negligent if the fence was not maintained, watergaps were not kept up, or the animals did not have adequate feed or water available, among other possible reasons.

Can I keep the trees and other plants that are on my side of the fence?

Traditionally, 10 feet on each side of the fence is kept clear of brush and trees to minimize potential damage to the fence and so the fence can be maintained easily, but it is not a legal requirement. However, you can be held liable and have to pay for repairs if your trees or brush obstruct or fall onto the fence.

Miscellaneous issues

What if my neighbor and I agree on a different maintenance plan than what's in the law?

General fence law

If you and your neighbor agree on a maintenance plan for other than the right half, the agreement must be in writing and recorded in the county recorder's office.* The agreement will then be binding on you and future owners.

Local option fence law

Although the right half is only the tradition in these counties, anything other than that needs to be in writing and recorded in the county recorder's office.*

Who is responsible for water gaps on the boundary line?

You may have heard that water gaps are the responsibility of the owner that is downstream or on whose side the wire is on, but these arguments are not legally or otherwise binding. The law does not specifically address water gaps, so the landowner whose portion of the fence the water gap is on would be responsible. Any agreement otherwise needs to be recorded in the county recorder's office.* An inequity such as when a water gap is entirely on one landowner's portion is a good example of a case when neighbors working out an agreement other than what the law requires is a good idea.

What about county-specific rules on fences or animals?

There are no county-specific fence laws. Although you may hear such rules as stallions can't be out of a barn and running in a pasture, or that if livestock come onto your property you can sell or butcher them, nothing in the law states either of these as legal.

Can I distraint or hold animals that come onto my property?

The fence statute and two others (RSMO chapters 270 and 271) address what landowners can do with animals that come onto their property. A landowner may distraint or hold the animals only in nonboundary situations, where property lines are along a road or creek. Contact the owner as soon as possible, and keep in mind that distraining an animal requires you to treat it as your own, that is, that you feed and care for it. Contact an agriculture business specialist for the specifics of distraining animals.

Additional information

Where can I find more information on the Missouri fence law?

Read MU Extension publication G810, *Missouri Fencing and Boundary Laws*, online at <http://extension.missouri.edu/G810>, or order a printed copy (see back page).

Read the actual law online at <http://www.moga.mo.gov/mostatutes/ChaptersIndex/cbaptIndex272.html>. The general law is in sections 272.010 to 272.200; the local option law is in sections 272.210 to 272.370.

*The form to be filed must meet certain recording requirements. For a sample, contact either Joe Koenen, MU Extension agricultural business specialist, at koenenj@missouri.edu, or your lawyer.

ALSO FROM MU EXTENSION PUBLICATIONS

- G453 *Farmers' Liability for Their Animals*
G810 *Missouri Fencing and Boundary Laws*

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