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Defense of the Fence

Like all the other things that need to get done this time of year, so do fences often need to be built and repaired. It is a good idea to keep in mind Kansas fence laws when doing so.

Right-hand “Rule”

Many farmers and ranchers know about the “right hand” rule of maintaining a fence between the neighbors. This rule states that the right handed side of the fence past the mid-point is yours to take care of. Oddly enough, this more commonly known rule is also the one that is not actually a law at all, but merely a guideline. The actual law in Kansas is, that adjacent landowners share equal responsibility for all the fence, rather than all the responsibility for one-half of the fence. A custom written agreement between landowners can be made regarding the in-common fence that describes the legal responsibility and this can be carried down to subsequent landowners as well.

The Fence Makes the Property Line

One of the more surprising laws is that a fence can effectively move a property line. This happens when a fence is built along the side of property line rather than right down the middle. Over time the adjacent landowner (or new landowner) comes to believe the fence is the actual property line and maintains the land in that manor. This “adverse possession” of land is when someone is using and maintaining land in an obvious open manner for over 15 years without the original landowner detesting. Don’t think that this is just for moving fence lines either, this can be any piece of land.

No Cows Is Not No Liability

A Kansan livestock owner is required to fence his or her animals in. They are legally responsible for those animals and usually the fences that hold them. However, as stated above, adjacent landowners share equal responsibility. This becomes an issue when one landowner has no livestock and maybe just has crops. The crop farmer has a responsibility for the fence and might not be able to recover damages to a crop if the cattle get out in the crop field through the shared fence. Another caveat in this is that a non-livestock owner cannot be forced to pay for a fence they do not want.

What Is a Legal Fence?

There are lots of types of fences. A creek can be considered a fence, though probably not a very good one. So can a row of hedge bushes like what used to be common in Eastern Kansas. Now we mostly have just barbed wire and electric fences. A barbed wire fence must have three wires minimum. The bottom wire between 18 to 24 inches from the ground and the top wire (if only three used) between 44 to 48 inches. Posts cannot be more than 33 feet apart (2 rods) and the wires well fastened to the posts. There are rules for type of wire that can be used that basically translate to use fencing wire. The electric fence seems to be more forgiving though. An electric fence can be just one 14-gauge wire not more than 48 inches from the ground.

Fence Viewers

The term “fence viewers” might seem odd, but this is who decides what fences are legal and handles disputes between landowners. Generally speaking, the county commissioners are the fence viewers, unless they appoint the role to someone else.

Highways Fences

While this article does not cover near all the fence laws, there is one that should not be skipped, highway fences. In Kansas, KDOT has a responsibility to keep highways in a safe condition and that involves highway fences. If livestock get onto the highway and there is an accident, KDOT can be legally responsible. However, that doesn't mean a highway fence is a free fence. Livestock owners still are responsible for fencing in their animals. Technically, this mean two fences. Keep in mind though that these are state roads. The county's responsibility for county roads are not likely the same.

In Kansas, a livestock owner is responsible for any damages occurred from livestock getting through a faulty fence. But if a legal fence is kept in good shape and there is no evidence of negligence, it should keep the owner out of legal trouble even if something like a vehicle accident does happen.

This article was adopted from Dr. Roger McEowen's “*Kansas Fence Law*”. If you have any questions over Kansas agricultural laws, please give me a call at 620-724-8233 or email jcoover@ksu.edu.

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