

Affidavits Required by Ohio's New Line Fence Law



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Ohio enacted a new line fence law that became effective on September 30, 2008. The new law, also called the “partition fence law,” refers in several places to affidavits that landowners file in order to establish legal rights under the law. These affidavits are important, as they may determine who is responsible for building and maintaining a line fence. Proper timing of the affidavit is also important, as a landowner must meet a deadline or timing requirement in several instances. Most urgent is the affidavit establishing that a line fence existed in the past two years—a landowner must file this type of affidavit by September 30, 2009.

Below is a summary of the affidavits in the new line fence law and the information required for each type of affidavit. Because Ohio law uses the term “partition fence” but most Ohioans use the term “line fence,” this summary uses the two terms interchangeably.

For further explanation of the new line fence law, see other publications on our web site at <http://www.aede.osu.edu/programs/aglaw>.

What is an Affidavit?

An affidavit is a formal, sworn statement of fact signed by the person who makes the statement (referred to as the “affiant”) and witnessed and certified by a notary public. Affidavits may vary in language and appearance, but generally adhere to the following format:

[TYPE OF AFFIDAVIT]
[APPLICABLE OHIO REVISED CODE SECTION]

STATE OF OHIO
COUNTY OF [NAME], ss:

[Name of affiant], being first duly cautioned and sworn, states as follows:

[Statements of affiant]

[Signature of Affiant]

Sworn to and subscribed before me, a Notary Public of the State of Ohio, this ____ day of [month and year].

[Signature and Seal of Notary Public]

Types of Affidavits under the New Law

Affidavit of a Previously Existing Partition Fence. Under section 971.05 of the Ohio Revised Code, a landowner may establish that a line fence existed on a property division line within two years prior to filing the affidavit. A landowner must file this type of affidavit by September 30, 2009. This affidavit ensures that both landowners would be responsible in “equitable shares” for a replacement fence. Without an affidavit of previous fence or any evidence of a preexisting line fence, the landowner who wants to construct a replacement fence on the property line would be entirely responsible for the fence.

Affidavit of a Removed Partition Fence. A landowner who removes a fence may establish that a line fence existed on the property division line, but was removed and not replaced within one year of removal. The landowner must file this type of affidavit within one year of removal of the line fence. Provisions for this affidavit are in ORC 971.06. Note that a landowner who removes a line fence must also provide a 28 day notice of removal to adjoining landowners. With proper filing of an affidavit of removal and a 28 day notice of removal, the cost of a replacement fence would be shared “equitably” between the landowners. Failure by the owner who removed the fence to provide the 28 day notice and file the affidavit will exempt the adjoining landowner from any costs or responsibilities for a replacement line fence.

Affidavit of Partition Fence Costs. If a landowner pays for the construction and maintenance of a new line fence built after September 30, 2008, the landowner may file an affidavit specifying the costs incurred in building the fence, and may also file an affidavit each year setting forth annual maintenance costs for the line fence. The affidavits serve as evidence of the total cost of the fence, so that the landowner may later seek reimbursement from an adjoining landowner who did not contribute to the fence but uses the fence to contain livestock within thirty years of its construction, according to ORC 971.07. A landowner must file this type of affidavit before seeking reimbursement for later use of the fence.

Important Time Requirements for Affidavits

There are several timing requirements that are critical to establishing legal rights under the line fence law. A landowner who fails to meet the timing obligations may forfeit his or her legal rights. The requirements are as follows:

- A landowner must file an *Affidavit of Previously Existing Partition Fence* **by September 30, 2009**, and the affidavit must pertain to a line fence that existed **within two years** of the filing of the affidavit.
- A landowner who removes a line fence must file the *Affidavit of Partition Fence Removal* **within one year** of the date the fence was removed.
- A landowner seeking *reimbursement* on a line fence from a neighbor who later uses the fence to keep livestock **must first** have filed an Affidavit of Partition Fence Costs.

Information to Include in Partition Fence Affidavits

According to ORC 971.15, an affidavit filed under the partition fence law should include:

- A description of the land where the fence is located. To meet this requirement, the affidavit should include a legal description of *each* property that shares the division line on which the fence is, was or will be located.
- A statement of the purposes and uses of the fence. For example, the affidavit should state whether the fence is or was used to contain livestock, prevent trespassers, mark the boundary line, etc.
- For an *Affidavit of Previously Existing Partition Fence*, the affidavit should *also* include a statement that a line fence existed within two years previous to the date of filing the affidavit, and that the fence was removed and not replaced. ORC 971.05.
- For an *Affidavit of Partition Fence Removal*, the affidavit should *also* include a statement that the partition fence was removed within one year of the filing of the affidavit, and was not replaced. ORC 971.06(C)(1).
- For an *Affidavit of Partition Fence Costs*, the affidavit should *also* specify the costs incurred in building or maintaining the fence. To meet this requirement, the affidavit should include all material and labor costs, and could also include copies of receipts as attachments to the affidavit. ORC 971.07(A)–(B).

Executing and Recording Affidavits

An affidavit under the line fence law should be signed by the affiant and sworn to before a notary public, who must certify the affidavit. After proper execution of the document, the line fence law requires that the affidavit be recorded in the county where the land or line fence exists.

A defect in an affidavit could invalidate the document and foreclose a person from establishing legal rights under the line fence law. For this reason, it is important to ensure that an affidavit is written in accordance to the law and is properly executed and recorded. An attorney can provide the expertise necessary to guarantee that the affidavit satisfies all legal requirements. For assistance finding an attorney who practices in agricultural law, refer to the website of the Ohio State Bar Association at <http://www.ohioabar.org/Pages/FindALawyer.aspx>.

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