

Alternative Landowner Agreements under Ohio Line Fence Law



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Ohio's Line Fence Law creates rules of responsibility for the construction and maintenance of fences located on the division line between rural properties. However, the law allows landowners to enter into an alternative landowner agreement that alters how or whether the law applies to their properties. According to R.C. 971.04, landowners may enter into a written agreement that changes the rights and obligations of the owners from what is established in the law. Where landowners properly record an alternative landowner agreement, the agreement controls all line fence matters addressed within the document and is binding on all future owners of the properties.

Why use an Alternative Landowner Agreement?

There are several reasons for using an alternative landowner agreement for a line fence.

- *The law may require a written agreement.* Where a new line fence will contain livestock, the Ohio Line Fence Law requires both landowners to agree in writing if the fence will be constructed as a barbed, electric or live fence. Landowners should use a written agreement in this situation.
- *The agreement can maintain the "status quo" that existed before the Line Fence Law changed in September of 2008.* The new law removed the old rule of "equal shares" for existing line fences, which stated that landowners had equal responsibility for construction and maintenance of the line fence. However, landowners may continue the equal shares rule—or any other arrangement they honored—by entering into an alternative agreement that reinstates the prior arrangement.
- *An alternative landowner agreement allows landowners to avoid litigation.* The dispute process outlined in the Line Fence Law requires filing a civil lawsuit or a complaint with the board of township trustees, which can be costly, time consuming and may produce an unsatisfactory outcome. A written agreement can help prevent disputes, establish specific outcomes for disagreements, and allow landowners to bypass the complaint process.
- *Landowners can address their specific needs by using an alternative landowner agreement.* For example, landowners may want to use a particular type of fence or landowners sharing a waterway, woodlot, or hilly terrain may desire a specific placement and division of the fence. The alternative landowner agreement allows landowners to meet their individual needs even if the Line Fence Law provides otherwise.

Statutory Requirements for Alternative Landowner Agreements

An alternative landowner agreement must meet the requirements of R.C. 971.04 and R.C. 971.15, as follows:

- The line fence agreement between the landowners:
 - a. Is in writing.
 - b. Includes a description of the land(s) where the fence is or would be located.
 - c. Includes a description of the purpose and use of the fence.
- The landowners file the agreement with the county recorder in the county where the properties are located.

Creating an Alternative Landowner Agreement

An alternative landowner agreement is a contract that affects the rights and obligations of current and future landowners. For this reason, landowners should take care to ensure that the document complies with the law and comprehensively addresses the line fence situation. It is advisable to seek the assistance of an attorney knowledgeable in agriculture, real estate or line fence law. A poorly drafted agreement could create more problems than solutions, and an attorney's guidance will prove cost effective over the long term.

The following provides a checklist for creating a valid alternative landowner agreement.

1. *Identify all property owners sharing the division line.* Each property owner(s) should be included as a party to the agreement. Where there are joint owners to a property, such as a husband and wife, be sure to include each joint owner. Where a business entity owns a property or the land is held by a trust, be sure to properly identify the entity or trust and ensure that the appropriate individual authorizes the agreement on behalf of the business or trust.
2. *Identify all properties sharing the division line.* The law requires a description of the land where the fence is or will be located. To meet this obligation, the agreement should identify each parcel of land sharing the division line or line fence and refer to the volume and page of each property's current deed record. A legal description of each property should be included as an attachment to the agreement.
3. *Describe the purpose of the fence.* The law requires a description of the purpose and use of the fence. It is unclear whether this description automatically limits all landowners to using the fence only as described in the agreement. For this reason, consider making the description general enough to accommodate potential uses that may develop in the future.
4. *Address proportions of responsibility for the fence.* Describe each landowner's responsibilities for building and/or maintaining the fence. If a landowner has no responsibility, be sure to state such. Consider physical versus financial responsibility. For example, if each landowner will be responsible for "one half," identify the actual physical proportion of the fence or whether the "half" refers to 50% of the financial responsibility. Describe how total costs will be incurred and determined where landowners are sharing costs. Address issues such as labor, trees on the division line, removing fallen trees on the fence, and hiring contractors.
5. *Formalize the agreement.* All owners should sign the alternative landowner agreement. To ensure validity, the agreement should be acknowledged by a notary public. The properly executed agreement should be filed with the county recorder in the county (or counties) where the land is located.

Additional Resources on Ohio's Line Fence Law

For more information on the Ohio Line Fence Law, refer to other resources on the web site of OSU's Agricultural and Resource Law Program at <http://aede.osu.edu/programs/aglaw>.