

Law Bulletin



Law you need to know from OSU Extension's Farm Office

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Ohio's Line Fence Law: Frequently Asked Questions

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Line fences, also called partition fences, are fences located on the boundary line between the adjoining properties of two owners. Ohio's line fence laws address questions like who can install a line fence, where they can install it, what they are responsible for, when duties arise, and how rights can be enforced.

Since major revisions to Ohio's line fence laws in 2008, farmers have asked many questions about how the law now works. This bulletin addresses many of the frequently asked questions by theme.

Scenario A: My Neighbor Wants to Install a New Fence on a Never Fenced Boundary

1) *My neighbor wants to install a new line fence between my property and his. Can I stop him from installing a new fence?*

Generally, no. Ohio's line fence laws assume that property owners can install a boundary fence. This applies to property owners outside of municipal corporations and whose properties are not laid out into lots. Ohio Revised Code ("O.R.C.") § 971.03. However, you could seek an injunction from your county court of common pleas if the fence would *unreasonably* interfere with your quiet enjoyment and use of your property.

2) *Even if he does not have any livestock?*

Still no. Whether the fence will contain livestock is primarily relevant to what type of fence must be built. If the fence will contain livestock, then O.R.C. § 971.02

requires the installation and maintenance of a "preferred line fence," as defined at O.R.C. § 971.01(F), unless the neighboring property owners agree otherwise by signing an "alternative fence agreement." O.R.C. § 971.04. The statute does not provide guidance as to what is recommended or not allowed when the fence will not contain livestock.

3) *If I cannot stop my neighbor from installing the new fence, can I at least have a say in what kind of fence he installs?*

Possibly. By signing an "alternative fence agreement," neighbors may negotiate and agree to not have a fence at all, to install a fence other than a "preferred partition fence," and to delegate rights and obligations regarding the installation and upkeep of the fence. O.R.C. § 971.04. The neighbors just have to take this agreement to their county recorder's office. The agreement will run with the properties, which can bind future owners.

4) *Am I responsible for paying for the installation of the new fence?*

Generally, no. If the fence is truly new (meaning that no fence previously existed on the line, there is no evidence that a fence previously existed on the line, there is no affidavit saying that one did, and there is no agreement otherwise), and if you will neither use nor benefit from the fence, then the neighbor who wants to install the fence is responsible to pay for the installation of the new fence. O.R.C. § 971.07.

5) *Am I responsible for paying for the upkeep and maintenance of the new fence?*

Still no. Your neighbor will likely keep a ledger of how much he spent on upkeep and maintenance every year, but you will not have to pay so long as you still are not using or benefitting from the fence. O.R.C. § 971.07.

6) *If my neighbor installs the new fence, what happens if one day I decide that I want to use the new fence?*

If within thirty years of the fence's installation, you decide that you would like to keep livestock, and you start using the fence that your neighbor paid for, your neighbor might seek a reimbursement from you. Your neighbor must have filed an affidavit stating the cost of the initial fence, along with the annual upkeep expenses. The reimbursement will be determined by a formula set by statute. O.R.C. § 971.07(B).

Scenario B: My Neighbor Wants to Permanently Remove an Existing Fence

7) *My neighbor wants to permanently remove an old fence that divides our properties. If I don't want the old fence removed, can I stop him?*

Ohio's line fence laws are somewhat quiet on this exact question. Removing a line fence might qualify as neglecting to "maintain in good repair," which would allow you to file a complaint with your county's court of common pleas or your board of township trustees. O.R.C. § 971.09(A)(1).

8) *If I let him remove the fence, can I still preserve my right to require him to pay for half of a new fence if one day decide I want a fence?*

The law requires the neighbor to file an affidavit of fence removal if the fence is not replaced within one year after removal. O.R.C. § 971.06(C). If the fence is rebuilt, the affidavit preserves the fence as one that would be replaced according to equitable shares. If the landowner does not file an affidavit, you may be able to do so. See an attorney for assistance.

Scenario C: My Neighbor Wants to Replace an Old Fence on Our Property Boundary

9) *My neighbor wants to replace an old fence that divides our properties. I like the current fence. If I don't want the old fence replaced, can I stop her?*

Probably not, especially if the current fence has fallen into disrepair or if she is replacing it to make it compliant with the "preferred partition fence" standards. Her primary responsibility is to notify you of her plan to remove the fence at least 28 days before the removal is to begin. O.R.C. § 971.17.

10) *Do I have to pay for the replacement fence?*

If the replacement is built within one year, you may have to pay an equitable share. O.R.C. § 971.06(C)(1). An equitable share does not have to be equal but is instead based upon factors such as topography, geographic conditions, vegetation and trees, trespassing risk, boundary marking, and the presence and type of livestock. O.R.C. § 971.09(E). If your neighbor does not give you the 28 day notice as required by O.R.C. § 971.17, she will not be able to seek reimbursement from you for the replacement fence. If the replacement is not built within one year, your neighbor can preserve her right to later seek reimbursement by filing an affidavit with the county recorder within the year. O.R.C. § 971.06(C)(1).

The Role of Township Trustees

11) *What sorts of line fence issues can I raise to my township trustees through the complaint process?*

Aggrieved property owners may file a complaint with their board of township trustees if their neighbor "neglects to build or maintain in good repair" a line fence, or the portion that the neighbor is responsible to build or maintain. O.R.C. § 971.09(A)(1). Aside from those specific issues, the statute does not explicitly provide township trustees with authority to receive other line fence complaints.

12) *Can my township trustees prevent my neighbor from installing a new fence?*

Ohio's line fence laws do not clearly give township trustees the right to review complaints regarding a new fence. They can receive complaints regarding a neighbor's neglecting to build or maintain under O.R.C. § 971.09(A)(1)(b), but nowhere does the statute allow them to review complaints to stop a new fence.

13) *Can my township trustees prevent my neighbor from removing a pre-existing fence?*

Again, township trustees can review complaints that allege a failure to build or maintain a fence. A removal complaint may allow the township trustees to conduct a review and make a determination about the fence and the responsibilities of the parties. O.R.C. § 971.09(D)-(E).

14) *What happens when my neighbor's property is in another township or county?*

In this situation, the trustees of both townships have concurrent jurisdiction, meaning that both sets of trustees can participate as equals. O.R.C. § 971.09(A)(3).

15) *What if I don't like or agree with the decision of my township trustees?*

Under the statute, if you or your neighbor do not agree with the determination of the township trustees, you or your neighbor may submit a request for binding arbitration to the local court of common pleas. O.R.C. § 971.09(G). Arbitration uses a neutral, third party decision maker who issues a binding decision, much like a judge. Arbitration is intended to avoid some of the costs of litigation.

16) *What if I don't like the idea of binding arbitration?*

You can choose to go to court at the outset by filing an action with your county's court of common pleas rather than with your township trustees. O.R.C. § 971.09(A)(1).

Or, if you choose the township trustee process but disagree with their decision, you can appeal their determination to your county's court of common pleas instead of choosing arbitration. Some people prefer to go to court instead of using out-of-court processes like arbitration. The statute only mentions appealing township trustee determinations to binding arbitration, but at least one court has interpreted the statute to mean that arbitration is an option that parties may choose, not necessarily a requirement. *Kamenar R.R. Salvage v. Phelps*, No. 09 CV 0039 (Union Cty. Ct. Com. Pl., Jun. 9, 2009).

Fence Construction and Upkeep

17) *During the construction of the new fence, can I prevent my neighbor and the fence installer from coming onto my property?*

No. Your neighbor and their contractor have a statutory right to enter onto a ten foot wide strip of your property that extends the length of the boundary between your properties. O.R.C. § 971.08(A). This applies when a new fence is being installed and when your neighbor is maintaining the fence.

You could be criminally prosecuted for interfering, threatening, or harming your neighbor or their contractor while they work on a fence within this ten foot strip of your property. O.R.C. § 971.08(B); O.R.C. § 971.99.

However, your neighbor will be liable for any damages caused by their entry onto your property, including damages to your crops. O.R.C. § 971.08(A).

18) *What are my responsibilities with regards to upkeep?*

Ohio's noxious weeds laws are part of Ohio's line fence laws. These require you to keep a four foot wide strip all along the fence, as well as in the corners, cut and clear of "all brush, briars, thistles, or other noxious weeds." O.R.C. § 971.33. You can plant vines and trees for use. Failure to comply allows the township to hire someone to clear your weeds, and to bill you. O.R.C. § 971.34–.36.

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