

# Ohio's New Line Fence Law

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One of Ohio's oldest rural laws has undergone a major revision. The Ohio General Assembly passed a new Line Fence Law in June of 2008. Also referred to as the "Partition Fence Law," the new law went into effect on September 30, 2008.

The biggest change in the law is an end to the rule of "equal shares" for line fences, except in one situation. Under the old law, adjacent landowners were required to share equally in the cost of building and maintaining a line fence, with a few exceptions. The old approach of equal shares is now replaced with two different rules of responsibility. A rule of individual responsibility will apply to "new" fences, and a landowner will be individually and solely responsible for building and maintaining the new fence. Previously existing fences will be subject to a rule of "equitable shares," which requires that responsibility be apportioned between adjoining landowners after consideration of six "fairness" factors.

The new law also changes the process for resolving line fence disputes, so that landowners may choose to take a line fence dispute to the court of common pleas or the board of township trustees. It also contains standards for new line fences that are to contain livestock, and addresses issues such as obstruction of line fence construction and access to adjoining land.

The following explains the new law. Other resources on the Line Fence Law are available on our website at <http://aede.osu.edu/programs/aglaw>. Township trustees should refer specifically to the publication "Ohio Partition Fence Law, A Procedural Guide for Townships" available on our website.

## What is a Line Fence?

The law defines a "partition fence" or "line fence" as a fence placed on the division line between adjacent properties. The new law expanded this definition in R.C. 971.01(E) by also including a fence that has been "considered" the division line *even if* a subsequent land survey shows that the fence is not placed directly on the property line. This change addresses the situation where landowners have historically treated the fence as the property line, but a recent survey shows that the fence is not exactly on the property line. The new law states that such a fence is subject to the Line Fence Law.

The Line Fence Law clarifies that these types of fences are *not* subject to the law:

1. Fences between lands laid out in lots under Ohio subdivision law.
2. Fences within municipal areas.
3. Fences required to be constructed by a person or company owning a railroad.
4. Line fences subject to a written and recorded alternative landowner agreement that varies from the Line Fence Law.

R.C. 971.03 and 971.04.

## Rules for Allocating Responsibility for Line Fences

There are now three different rules used to determine responsibilities for construction and maintenance of line fences. The type of fence determines the applicable rule. The Rule of Equitable Shares will apply to some line fences, and adjoining landowners will share “equitably” in the costs of building and maintaining a fence. Other types of fences will fall under the Rule of Individual Responsibility, and the owner who proposes the fence must construct and maintain the fence. The old law’s Rule of Equal Shares remains in place only in one situation.

Below is a detailed explanation of each rule, followed in the next section by a description of the various “types” of line fences to which the rules apply.

### 1. *The Rule of Equitable Shares*

The new law creates a Rule of Equitable Shares, which apportions responsibility based upon “equity” or fairness factors. Rather than the old law’s approach of requiring each landowner to be equally responsible for the fence, the new rule proportions obligations between neighbors after considering several factors related to the purpose, use and location of the fence. Under this rule, a “fair” solution might be for one landowner to bear responsibility for 30% of the fence while the remaining 70% would be the responsibility of the other owner.

A determination of equitable shares is made after considering the following six “fairness” factors:

- The topography of the property where the fence is or will be located.
- The presence of streams, creeks, rivers or other bodies of water on the property.
- The presences of trees, vines or other vegetation on the property.
- The level of risk of trespassers on either property due to the population density surrounding the property or the recreational use of adjoining properties.
- The importance of marking division lines between the properties.
- The number and type of livestock that each landowner may contain with the fence.

R.C. 971.09(E).

The Rule of Equitable Shares *only* applies to these types of line fences:

- Line fences that were in existence on the law’s effective date of September 30, 2008.
- Previously existing line fences.
- Removed line fences.

### 2. *The Rule of Individual Responsibility*

Under the revised law, only the landowner who wants to build a “new” line fence will be responsible for the fence. A “new” line fence is one placed where a line fence has never existed. The landowner who desires the new line fence must individually bear the cost of building and maintaining the fence, and cannot force the neighbor to contribute to those costs when constructing the fence.

There is a procedure, however, that allows a landowner who constructs a new line fence to seek reimbursement from a neighbor who did not contribute to the fence but later uses the fence for keeping

livestock. The landowner who built the fence in this situation may follow a reimbursement claim procedure outlined in the law to seek payment from the neighbor. See “Reimbursements for Use of a New Fence” later in this publication for further explanation of reimbursements.

### *3. The Equal Shares Rule*

The old law’s approach of equal shares for line fences remains in place only for certain governmental fences. The Ohio Department of Natural Resources, conservancy districts, and governmental entities with interests in recreational trails are responsible for an equal share of the total costs of the line fence if land they own, lease, manage or control is adjacent to land used to graze livestock. The adjoining landowner who grazes livestock is also responsible for an equal share of the fence.

## **Types of Line Fences**

The new law applies different rules of responsibility to different types of line fences. Below is an explanation of each type of fence. Note that we have created the names for these fences for explanation purposes—the law itself doesn’t include the exact terminology and titles used below. We note the section of the Ohio Revised Code to which we refer in our explanations.

### *1. Existing Line Fence*

An existing line fence is one that existed on the effective date of the new law – September 30, 2008. Existing line fences fall under the Equitable Shares Rule. If the adjoining landowners decide to build a new line fence in place of the existing fence, the new fence is also subject to the Equitable Shares Rule. R.C. 971.06.

### *2. Previously Existing Line Fence*

There are two ways to establish that a line fence previously existed on a property line. The Equitable Shares Rule applies to both types of previously existing line fences.

- a. Filing an Affidavit of Previously Existing Fence.* If a line fence existed within the past two years but has been removed, landowners may file an Affidavit of Previously Existing Fence. They must file the affidavit with the county recorder within one year of the effective date of the new line fence law-- by September 30, 2009. The Equitable Shares Rule will then apply to a replacement fence at the location. R.C. 971.05(A). For a detailed explanation of line fence affidavits, see the publication “Affidavits Required by Ohio’s New Line Fence Law” on our website.
- b. Establishing a previously existing line fence by evidence.* The law also states that the Equitable Shares Rule will apply in a situation where there is evidence that a partition fence previously existed between adjoining properties. The township trustees or court of common pleas determine whether the evidence indicates that a line fence did exist at the location. The law does not state what type of evidence is necessary or credible, but such evidence could include photos, written references to the fence or records of the fence, existence of fence posts, wire and other fence parts, and testimony from an eye witness. Unlike provisions for establishing a previously existing fence by affidavit, there are no timing requirements or deadlines for establishing a previously existing fence by evidence. R.C. 971.06(B).

### 3. *Removed Line Fence*

The new law allows for the Equitable Shares Rule to apply to a situation where an old line fence is removed and not immediately replaced. The owner who removes the fence must establish the removal by filing an affidavit and must notify the adjoining landowner prior to the removal.

- a. *Notice of Removal.* The law states that a landowner must notify the adjoining owner at least 28 days prior to removing a line fence. Notice may be made by personal service, ordinary mail, certified mail or publication in the county newspaper. The law does not address whether a landowner who receives a notice of removal may prevent the neighbor from removing the line fence. The law does state that an owner who fails to provide notice of removal forfeits the right to make a reimbursement claim for a replacement fence. Note that the forfeiture of reimbursement would apply only if a landowner failed to file an Affidavit of Removed Partition Fence to ensure that the Equitable Shares Rule would apply to a replacement fence. R.C. 971.17.
- b. *Affidavit of a Removed Partition Fence.* An owner who removes a line fence without replacing it within one year must file an affidavit to ensure that the Equitable Shares Rule will apply to a replacement fence. The affidavit must state that a partition fence was removed from the property in the previous year and was not replaced. 971.06(C). The law states that if an affidavit is not filed, the owner who constructs a new fence on the location is individually responsible for the fence. For a detailed explanation of line fence affidavits, see the publication “Affidavits Required by Ohio’s New Line Fence Law” on our website.

### 4. *New Line Fence*

If a line fence meets the definition of a “new” line fence, the Rule of Individual Responsibility applies and the owner who wants the new fence must individually pay for the cost of building and maintaining the line fence. A new line fence results where all of the following apply:

- There is not an existing line fence.
- There is no evidence that a partition fence previously existed.
- An affidavit has not been filed with the county recorder for either a previously existing or a removed fence.
- There is no written agreement filed with the county recorder concerning the fence.

R.C. 971.07.

### 5. *Reimbursement Claim Line Fence*

An owner who constructs a new line fence may seek reimbursement for the costs of building and maintaining the fence from an adjoining owner who uses the fence to contain livestock within thirty years after the fence was constructed. Where a reimbursement claim is paid by the neighbor or required to be paid by a court, the new line fence becomes a reimbursement claim line fence. The reimbursement claim fence is then subject to the Equitable Shares Rule. R.C. 971.07(D). See “Reimbursements for Use of a New Line Fence” later in this fact sheet for further explanation.

## 6. *Governmental Line Fence*

The governmental line fence is the only fence that is still subject to the old law's Equal Shares Rule. A governmental line fence exists when both of the following apply:

- Land is owned, leased, managed or controlled by the Ohio Department of Natural Resources, an Ohio conservancy district or an Ohio political subdivision that has a property interest in "recreational trails," and,
- The land is adjacent to land used for grazing livestock.

R.C. 971.071 and R.C. 971.01(D)(2).

## **Alternative Landowner Agreements**

Landowners may enter into an agreement with one another that alters how or whether the line fence law applies to their properties. For example, the agreement could state that no partition fence is needed, that responsibilities for the fence will be divided a particular way, or that a certain type of fence is or is not permitted. This type of landowner agreement is valid and binding on future property owners if it meets the following requirements stated in the Line Fence Law:

- The agreement is in writing.
- The agreement includes a description of the land where the fence is located.
- The agreement includes a description of the purpose and use of the fence.
- The owners file the agreement with the county recorder where the land is located.

R.C. 971.04 and R.C. 971.15

## **Reimbursements for Use of a New Line Fence**

Under the new law, if a landowner builds a new line fence and a neighbor who did not contribute to the cost of the fence uses the fence for keeping livestock within thirty years of the fence's construction, the landowner may seek reimbursement from the neighbor. This rule applies to any landowner who succeeds the owner who originally built the new line fence; any landowner who owns the land within the thirty year period may seek reimbursement. The landowner seeking reimbursement must follow the law's procedures for reimbursement, described below.

1. *Filing an Affidavit of Partition Fence Costs.* The landowner who builds a new line fence may file an affidavit with the county recorder specifying the costs incurred in building the fence. The landowner may also file an affidavit each year stating the costs expended for maintaining the fence. An owner who does *not* file the Affidavit of Partition Fence Costs may *not* seek reimbursement for later use of the fence by a neighbor. The law does not provide a deadline for filing the affidavits. R.C. 971.07(A).
2. *Use of the fence by an adjoining landowner.* The reimbursement procedure may only be used if:
  - a. An adjoining owner uses the partition fence for the purpose of containing livestock within thirty years after the fence was built.
  - b. The adjoining owner or his/her predecessors did not contribute to the costs of building and maintaining the fence.

R.C. 971(07)(B).

3. *Claim for reimbursement.* The landowner seeking reimbursement must send a “claim” for reimbursement to the neighbor who uses the fence. There is no official form for the claim. A written letter requesting payment calculated according to a formula set forth in the law should suffice. The formula allows reimbursement based on the total costs of the fence and the number of years remaining in the thirty year reimbursement period, as follows:
- Calculate the total costs of building and maintaining the fence.* Add together all Affidavits of Partition Fence Costs filed with the county recorder for the line fence. Only those costs verified in a recorded affidavit may be included in the total costs.
  - Determine the annual cost of the fence.* Divide the total costs of the fence (a) by thirty to reach the annual cost of the fence over its thirty year reimbursement life.
  - Determine the number of years remaining in the reimbursement period.* Calculate the number of years that the fence has existed and subtract these years from the thirty year period allowed for reimbursement. For the beginning date of existence, use the date the first Affidavit of Partition Costs was filed. Use the date of the reimbursement claim as the ending date of the fence’s existence. A partial year counts as one year.
  - Multiply the annual cost of the fence (b) by the number of years remaining in the reimbursement period (c).* This is the reimbursement claim amount.
- R.C. 971.07(B).

4. *Failure to pay a reimbursement claim.* If an adjoining landowner fails to pay a claim for reimbursement, the owner who made the claim may file an action in court to recover the amount. Township trustees do not resolve disputes over reimbursement claims. R.C. 971.07(C).
5. *Change to the Rule of Equitable Shares.* Where an adjoining landowner pays a claim of reimbursement, either voluntarily or by court order, the rule of responsibility for the partition fence changes to the Equitable Shares Rule. Each landowner is responsible for maintaining the fence in the future in equitable shares. R.C. 971.07(D).
6. *Required modification of the partition fence.* Where a reimbursement claim has been paid or ordered by a court, the adjoining owners of the fence must modify the fence to ensure that it meets the standards for fences containing livestock, explained in the section below on “Line Fences Containing Livestock.” The adjoining landowners must equally divide the costs of modifying the partition fence for livestock. R.C. 971.07(B). The landowners may agree not to modify the fence, but must follow the procedures for alternative landowner agreements. R.C. 971.04.

## **Line Fences Containing Livestock**

The new law sets standards for line fences that contain livestock and are constructed *after* the date the law became effective. After September 30, 2008, a line fence that contains livestock must meet the law’s definition of “preferred partition fence.” A preferred partition fence is any of the following:

- A woven wire fence of either standard or high tensile wire and topped with one or two strands of barbed wire that is at least 48 inches from the ground.
  - A nonelectric high tensile fence with at least seven strands of wire constructed in accordance with NRCS standards.
  - A barbed wire, electric or live fence to which the adjoining landowners agree, in writing.
- R.C. 971.02.



Adjoining landowners may agree to a different line fence for containing the livestock; if so, the preferred partition fence rule would not apply. The landowners' agreement must be in writing and recorded with the county recorder.

## **Access for Line Fence Work**

Landowners must now allow access for a neighbor to build or maintain a line fence. The new law grants rights to a neighbor or his or her contractor to enter upon up to ten feet of the adjoining property to construct and maintain a line fence. The ten foot width runs the entire length of the fence. The law also states that the neighbor or contractor is responsible for harm caused to the adjoining property, including crop damages. R.C. 971.08.

## **Obstructing Work on a Line Fence**

The law provides criminal penalties for obstructing or interfering with a person who is lawfully engaged in building or maintaining a line fence, or someone who is acting in any way permitted by the Line Fence Law. The misdemeanor penalties become more severe where there are threats or actual physical harm involved in the obstruction, and causing serious harm or death amounts to a felony. R.C. 971.08.

## **Fence Removal Debris**

An owner may not place debris from the removal of a line fence on a neighboring property without the written agreement of the adjoining neighbor. The law provides the adjoining neighbor with a legal cause of action against an owner who places fence debris on the property without written permission, which may include damages for the cost of removing the debris along with attorney fees. R.C. 971.17.

## **Procedure for Line Fence Disputes**

Historically, township trustees have had the legal duty of resolving line fence disputes. Under the new law, an aggrieved owner now has two options when a neighboring landowner "neglects to build or maintain" a fence—filing a complaint with the board of township trustees or filing a complaint directly in the court of common pleas. A second new provision allows a party to a complaint filed with the township to request binding arbitration if unhappy with the trustees' decision. Below is a description of the procedures for handling line fence dispute.

### *1. Complaints filed with the Board of Township Trustees. R.C. 971.09.*

Notice of Rights and Responsibilities. A landowner who wants to file a complaint with the township trustees must first receive a Notice of Rights and Responsibilities from the board of trustees. The notice contains a description of potential financial and maintenance responsibilities that may result from filing a complaint and an explanation that the owner may file an action in the court of common pleas instead of filing a complaint with the township. The new law requires that a landowner sign and return the notice prior to filing a complaint with the township. R.C. 971.09(A)(2).

Fence viewing. The trustees must view the property where the fence is or will be located, and must provide notice of the viewing to all adjoining landowners at least ten days prior to the viewing. At the viewing, the trustees must determine whether a fence exists or previously existed at the location. The trustees must also review the partition fence records filed with the county recorder, and may request additional information from the landowners.

Assignment. The law requires the trustees to make a decision on the complaint at their next regularly scheduled meeting. If the dispute involves a determination of equitable shares, the trustees must consider each of the “fairness” factors contained in R.C. 971.09. The trustees must serve written notice of the decision to the parties and file the decision with the county recorder. The trustees may assess the costs of handling the complaint equally against the landowners, and may have the costs placed on the landowners’ real property tax bills.

Arbitration Requests. Another change in the law is that an owner who disagrees with a board of township trustees’ decision on a line fence complaint may request that the decision be submitted to binding arbitration. The court of common pleas will appoint an arbitrator, who will review the trustees’ decision and each landowner’s recommendations to make a final decision. The arbitrator’s decision is binding on current and future landowners. Each party must share equally in the cost of the arbitrator’s services.

Appeals. The landowners may also appeal the decision of the board of township trustees to the court of common pleas pursuant to R.C. 2506.01.

## *2. Complaints filed with the Court of Common Pleas. R.C. 971.16.*

A landowner may also choose to file a complaint on a line fence dispute with the court of common pleas in the county where the fence is or would be located. The court handles a line fence complaint in accordance with ordinary court procedures, and must consider each of the “fairness” factors in R.C. 971.16 when making a determination of equitable shares. Either party may appeal the court’s decision to the court of appeals.

## **Clearing the Fence Row**

The old law’s requirement for keeping a fence row clear of brush, briars, thistle and weeds within four feet of the fence is still intact. A landowner may demand that a neighbor clear the fence row. If the neighbor fails to do so, the board of township trustees may order the fence row cleared and assess costs for the work against the neighbor’s real property taxes. R.C. 971.33.

## **Repealed Provisions**

In addition to the changes explained above, the new Line Fence Law repeals the following provisions of the old law: prohibitions against barbed wire, electric or live fences; procedures for fences on a county or township line or in a stream; water gate requirements; fences to bridges and culverts; restrictions on hedge fences; and negligence penalties against township trustees.