

An Overview of Virginia Fence Law

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The information presented in this document about Virginia Fence Law and legislation is meant to be for educational purposes only. Any advice regarding general or specific cases of applicability of any or all Virginia Fence Laws, in the Code of Virginia or locally, should be dispensed by a qualified attorney at law.

History

Virginia's original fence law was based on English Common Law with which many colonists were familiar. It was the livestock owner's liability to fence in his animals. Among the earliest pieces of fence related legislation in America occurred in 1631 when the Virginia House of Burgesses declared,

—"Every man shall enclose his ground with a sufficient fence."

The implication of this was, for the first time, what constituted a "lawful" fence was being considered and legislated in America. Then in 1643, another important legislative act came to pass,

- "that every man shall make a sufficient fence about his cleared ground."

Now the priority for containing livestock was shifted to the Planter and Virginia General Law was born.

Beginning in 1643, the livestock owner no longer was primarily responsible for keeping his animals on his own land or for damages resulting from escaped animals. In 1646, the fence law was honed to define a lawful fence as being 4 ½ feet high and substantial at the bottom particularly. "General Law" placed the liability of property protection on the Planter and recovery of damages could only be sought if a lawful fence was provided by the Planter. On October 3, 1862 the General Assembly reconsiders the existing General Law applying to fences:

"Whereas a considerable portion of the territory of the commonwealth having been ravaged by the public enemy, and a great loss of labor, fencing and timber thereby sustained, it is rendered difficult if not impossible for the people of many counties and parts of counties, to keep up enclosures around their farms, according to existing laws...therefore county courts shall have the power to dispense with the existing law in regard to enclosures, so far as their respective counties may be concerned, and in their discretion they may deem it expedient to exempt from the operation of such law."

§ 55-299 Definition of Lawful Fence

Every fence shall be deemed a lawful fence as to any livestock named in § 55-306, which could not creep through the same, if

- (1) Five feet high, including, if the fence be on a mound, the mound to the bottom of the ditch,
- (2) Of barbed wire, 42 inches high, consisting of at least four strands of barbed wire, firmly fixed to posts, trees, or other supports substantially set in the ground, spaced no farther than 12 feet

apart unless a substantial stay or brace is installed halfway between such posts, trees or other supports to which such wires shall be also fixed,

(3) Of boards, planks, or rails, 42 inches high, consisting of at least three boards firmly attached to posts, trees, or other supports substantially set in the ground,

(4) Three feet high within the limits of any incorporated town whose charter does not prescribe, nor give to the council thereof power of prescribing, what shall constitute a lawful fence within such corporate limits, or

(5) Any fence of any kind whatsoever, except as described in this section, and except in the case of incorporated towns as set forth in subdivision (4), which shall be:

a. At least 42 inches high,

b. Constructed from materials sold for fencing or consisting of systems or devices based on technology generally accepted as appropriate for the confinement or restriction of livestock named in § 55-306, and

c. Installed pursuant to generally acceptable standards so that applicable livestock named in § 55-306 cannot creep through the same.

A cattle guard reasonably sufficient to turn all kinds of livestock shall also be deemed a lawful fence as to any livestock mentioned in § 55-306.

Nothing contained in this section shall affect the right of any such town to regulate or forbid the running at large of cattle and other domestic animals within its corporate limits.

The Board of Agriculture and Consumer Services may adopt rules and regulations regarding lawful fencing consistent with this section to provide greater specificity as to the requirements of lawful fencing. The absence of any such rule or regulation shall not affect the validity or applicability of this section as it relates to what constitutes lawful fencing.

(Code 1950, § 8-869; 1977, c. 624; 2007, c. [574](#).)

Cattle Guards

Cattle guards provide a convenient and effective way to contain cattle and other livestock where private roads need to pass through a boundary or fence.

§ 55-304. Property owner may place cattle guards or gates across right-of-way.

Any owner of property on which there is a road or way, not a public road, a highway, street or alley, over which an easement exists for ingress and egress of others may place cattle guards or gates across such way when required for the protection of livestock.

(Code 1950, § 8-873.1; 1954, c. 461; 1977, c. 624.)

§ 55-305. Persons having easement may replace gate with cattle guard; maintenance and use thereof; deemed lawful gate.

Any person having an easement of right-of-way across the lands of another, may, at his own expense, replace any gate thereon with a substantial cattle guard sufficient to turn livestock. These cattle guards shall be maintained by the owner of the easement, who shall be responsible for keeping such cattle guards at all times in sufficient condition to turn livestock. If a cattle guard is rendered inoperative by inclement weather, the easement owner shall utilize and maintain any reasonable alternative method sufficient to turn livestock from the inoperative cattle guard until such cattle guard is rendered operative again. If the gate to be

replaced is needed or used for the orderly ingress and egress of equipment or animals thereover, then such persons acting under the authority of this section shall construct such cattle guards so as to allow such ingress and egress or, if such easement is of sufficient width, may place such cattle guard adjacent to such gate. Such a cattle guard shall be deemed a lawful gate and not an interference with such easement.

(Code 1950, §§ 8-873.2, 8-873.3; 1954, c. 461; 1977, c. 624; 1992, c. 483.)

Sections 55-304 and 55-305 guarantee the following regarding cattle guards:

Any landowner, who provides an easement for others to travel on or off the property, may install a cattle guard in that easement if they deem it necessary. Any tenant having an easement or right of way across the lands of another may, at their own expense, replace a gate with a cattle guard. The owner of the easement then assumes the responsibility for maintaining the cattle guard. Cattle guards are lawful gates and should not interfere with easement traffic.

Trespassing Animals

These laws deal with how land owners, neighbors and courts handle trespassing livestock and the potential resulting damage.

§ 55-306. Damages for trespass by animals; punitive and double damages.

If any livestock domesticated by man shall enter into any grounds enclosed by a lawful fence, as defined in §§ 55-299 through 55-303, the owner or manager of any such animal shall be liable for the actual damages sustained. When punitive damages are awarded, the same shall not exceed twenty dollars in any case. For every succeeding trespass the owner or manager of such animal shall be liable for double damages, both actual and punitive.

(Code 1950, §§ 8-874 through 8-876; 1977, c. 624; 1979, c. 486.)

§ 55-307. Lien on animals.

After a judgment of the court a lien upon such animal shall enure for the benefit of the owner or tenant of such enclosed ground, and execution shall thereupon issue from the court rendering the judgment, and the animal or animals so trespassing shall be levied upon by the officer to whom the execution was issued, who shall sell the same, as provided by statute.

(Code 1950, § 8-877; 1977, c. 624.)

§ 55-308. Impounding animals.

Whenever any such animal is found trespassing upon any such enclosed ground, the owner or tenant of such enclosed grounds shall have the right to take up such animal and impound the same until the damages provided for by the preceding sections shall have been paid, or until the same are taken under execution by the officer as hereinbefore provided, and the costs of taking up and impounding such animal shall be estimated as a part of the actual damage.

(Code 1950, § 8-878; 1977, c. 624.)

§ 55-309. Duty to issue warrant when animal impounded.

It shall be the duty of such owner or tenant of such lands so trespassed upon, within three days after the taking up and impounding such animal unless the damages be otherwise settled, to

apply to a person authorized to issue warrants of the county or city in which such land is situated for a warrant for the amount of damages so claimed by him, and such court, or the clerk thereof, shall issue the same, to be made returnable at as early a date, not less than three days thereafter, as shall be deemed best by him; and upon the hearing of the case the judge shall give such judgment as is deemed just and right.

(Code 1950, § 8-879; 1968, c. 639; 1977, c. 624.)

“No-Fence Law”

Harkening back to the actions of the Virginia General Assembly in October of 1862, ultimately county courts yielded to Boards of Supervisors to enact local law, but when the No-Fence Law was locally approved, it created an absolute duty of animal owners to fence in their animals to contain them and prevent them from crossing onto the lands of another. This gave rise to the terms “Fence-In” and Fence-Out”.

§ 55-310. How governing body of county may make local fence law.

The board of supervisors or other governing body in any county in this State after posting notice of the time and place of meeting thirty days at the front door of the courthouse, and at each voting place in the county, and by publishing the same once a week for four successive weeks in some newspaper of such county, if any be published therein, and if none be published therein, in some newspaper having a general circulation therein, a majority of the board being present and concurring, may declare the boundary line of each lot or tract of land, or any stream in such county, or any magisterial district thereof, or any selected portion of such county, to be a lawful fence as to any or all of the animals mentioned in § 55-306, or may declare any other kind of fence for such county, magisterial district or selected portion of the county than as prescribed by § 55-299 to be a lawful fence, as to any or all of such animals.

(Code 1950, § 8-880; 1977, c. 624.)

Fence-In

- Source is English Common Law
- Boundary lines have been declared to be lawful fences under §55-310 of the Virginia Code. Landowners must fence their animals in.
- In 1862, most eastern VA counties enacted this option

Fence-In Example

A shepherd in Augusta County, which is “Fence-In”, has several sheep escape through a gate and find their way to a neighbor’s property whereby they commence to destroying a flower garden.

In this case, Augusta County, being Fence-In recognizes a property boundary line as a legal fence. This places liability for the damage incurred by the flower garden squarely on the Augusta County shepherd since it is his duty to control his animals. The moment those sheep crossed into the neighbor’s property, they crossed a “lawful fence”.

Fence-Out

- Source is Virginia General Law
- Landowners must construct a lawful fence around their properties in order to keep wandering animals out. This is like, open range law in some western states.
- In 1862, timber was still plentiful in most of western Virginia and some of these counties chose to remain with General Law.

Fence-Out Example

A cattleman in Rockbridge County has a few cows wander into a neighbor's corn field whereby the cattle consume a large quantity of corn and fodder.

Here the question of liability for the damage to the corn becomes two fold. First, Rockbridge County is "Fence-Out", meaning that boundary lines are not legal fences and citizens must erect a legal fence to bear no liability for unwanted livestock entering their premises. So, was there a fence around the corn field? The second concern then becomes, if there was a fence, did it meet the "legal fence" definition?

Legal fence YES –the cattlemen is liable for the damages

Legal fence NO –the damages are a loss for the owner of the corn

Beyond § 55-310

The infamous "No-Fence Law" gives certain authority to localities determining their own fence law status, but successive laws limit other possible implications of §55-310.

§ 55-311. Effect of such law on certain fences.

Such declaration shall not be construed as applying and shall not apply to relieve the adjoining landowners from making and maintaining their division fences, as defined by § 55-299, but as to such division fences, §§ 55-317 to 55-322, inclusive, shall be applicable.

(Code 1950, § 8-881; 1977, c. 624.)

§ 55-312. Application to railroad companies.

No action taken under the provisions of § 55-310 shall relieve any railroad company of any duty or obligation imposed on every such company by § 56-429, or imposed by any other statute now in force, in reference to fencing their lines of railway, and rights-of-way.

(Code 1950, § 8-882; 1977, c. 624.)

§ 55-313. No authority to adopt more stringent fence laws.

Nothing in § 55-310 shall authorize or require the boards of supervisors or other governing bodies of counties to declare a more stringent fence as a lawful fence for any county, magisterial district, or selected portion of any county, than as prescribed by § 55-299. (Code 1950, § 8-883; 1977, c. 624.)

§ 55-314. Effect on existing fence laws or no-fence laws.

Nothing in § 55-310 shall repeal the existing fence laws in any county, magisterial district or selected portion of any county, until changed by the board of supervisors or other governing body, in accordance with the provisions thereof; nor shall the provisions of such section apply to any county, magisterial district, or selected portion of any county, in which the no-fence law

is now in force, if such no-fence law exists otherwise than under an order of the board of supervisors or other governing body of such county entered pursuant to such section. (Code 1950, § 8-884; 1977, c. 624.)

§ 55-316. When unlawful for animals to run at large.

It shall be unlawful for the owner or manager of any animal or type of animal described in § 55-306 to permit any such animal, as to which the boundaries of lots or tracts of land have been or may be constituted a lawful fence, to run at large beyond the limits of his own lands within the county, magisterial district, or portion of such county wherein such boundaries have been constituted and shall be a lawful fence.

(Code 1950, § 8-886; 1977, c. 624; 1979, c. 486.)

Division Fences

Good fences make good neighbors only after the law ensures that obligation to build and maintain them, now and in the future, is assured.

§ 55-317. Obligation to provide division fences.

Adjoining landowners shall build and maintain, at their joint and equal expense, division fences between their lands, unless one of them shall choose to let his land lie open or unless they shall otherwise agree between themselves.

(Code 1950, § 8-887; 1970, c. 713; 1977, c. 624; 2005, c. [873](#).)

In 2005, when this law was amended, the intent was to remove the ability for an owner of commercial property to label the land as “lying open” regardless of interest in agricultural use. ***However the key to interpreting §55-317 is the absence of an existing division fence.*** If one neighbor needs a fence, typically for livestock, and the other neighbor does not, then both neighbors are not equally liable for the fence, as long as one neighbor allows the land to basically remain fallow.

§ 55-318. When no division fence has been built.

When no division fence has been built, either one of the adjoining owners may give notice in writing of his desire and intention to build such fence to the owner of the adjoining land, or to his agent, and require him to come forward and build his half thereof. The owner so notified may, within ten days after receiving such notice, give notice in writing to the person so desiring to build such fence, or to his agent, of his intention to let his land lie open, in which event, and if the one giving the original notice shall build such division fence and the one who has so chosen to let his land lie open, or his successors in title, shall afterwards enclose it, he, or they, as the case may be, shall be liable to the one who built such fence, or to his successors in title, for one-half of the value of such fence at the time such land shall be so enclosed, and such fence shall thereafter be deemed a division fence between such lands.

If, however, the person so notified shall fail to give notice of his intention to let his land lie open, as hereinabove provided, and shall fail to come forward within thirty days after being so notified, and build his half of such fence, he shall be liable to the person who builds the same

for one-half of the expense thereof, and such fence shall thereafter be deemed a division fence between such lands.

Notwithstanding the provisions of this section, no successor in title shall be liable for any amount prior to the recordation and proper indexing of the original notice in the clerk's office of the county in which the land is located.

(Code 1950, § 8-888; 1977, c. 624; 1985, c. 486.)

Does “lie open” mean forever? ***The key to §55-318 is whether or not the intention to build the original fence was put in writing and the decisions made were recorded in the county clerk’s office.***

§ 55-319. When division fence already built.

When any fence which has been built and used by adjoining landowners as a division fence, or any fence which has been built by one, and the other afterwards required to pay half of the value, or expense thereof, under the provisions hereinbefore contained, and which has thereby become a division fence between such lands, shall become out of repair to the extent that it is no longer a lawful fence, either one of such adjoining landowners may give written notice to the other, or to his agent, of his desire and intention to repair such fence, and require him to come forward and repair his half thereof, and if he shall fail to do so within thirty days after being so notified, the one giving such notice may then repair the entire fence so as to make it a lawful fence, and the other shall be liable to him for one-half of the expense thereof.

(Code 1950, § 8-889; 1977, c. 624.)

Sometimes the most contentious fencing issues between adjoining property owners arises over the disrepair or “unlawfulness” of an existing division line fence. The question of who pays for what if they don’t each agree that the fence is in need of repair or replacement can cause significant angst.

§55-319 addresses this. Important things to remember are:

- When an existing and lawful division fence is in place and is in need of repair, adjoining landowners both assume responsibility for half the repair costs.
- Since §55-319 deals with an existing fence, there is no avoidance of financial obligation for maintenance by one landowner choosing to let their land “lie open”.
- Like §55-318, notice of fence repair has to be filed at the county clerk’s office for 30 days before no response from the adjoining landowner obligates financial responsibility for half the fence.

Summary

- The history and interpretation of Virginia Fence Law can be both fascinating and complex.
- The “No-Fence Law” and division laws are probably the most misunderstood pieces of Virginia Fence legislation.
- It is important that, where boundary fences are concerned, landowners understand their obligations before construction to avoid contractors being caught in a conflict.

- Meeting the requirements of a “lawful fence” is critically important for enforcement of any of the Virginia Fence related laws.
- Fence maintenance agreements between adjoining landowners should be filed with the County Clerk’s office in the jurisdiction of the fence location.
- Properly filed fence agreements are binding for successive generations and landowners.