

An Overview of Virginia Fence Law

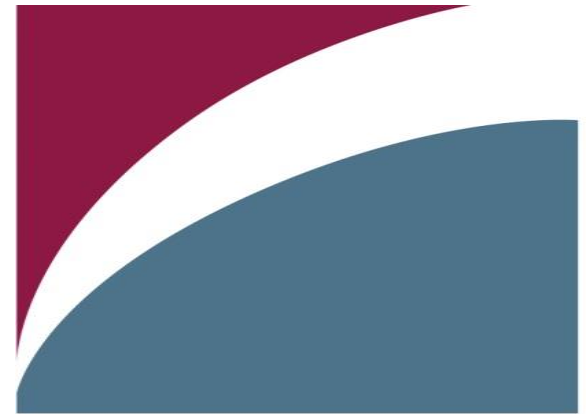
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The information offered in this presentation about Virginia Fence Law and legislation is meant to be for educational purposes only.

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.



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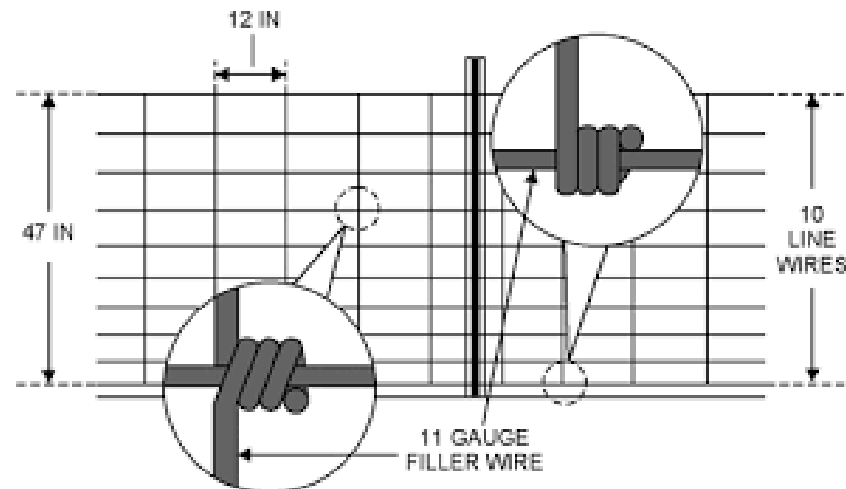
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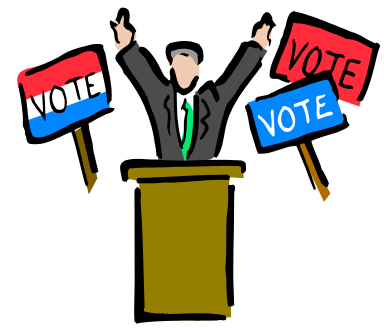
Concepts



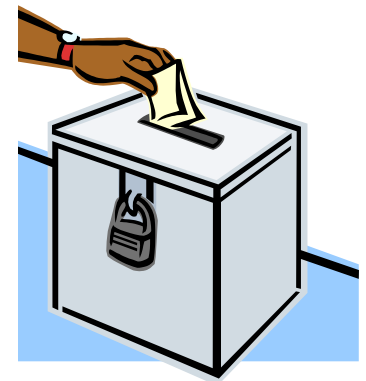
- History of Virginia Fence Law
- Fence In v. Fence Out
 - Common Law v. General Law
- Definitions of a Lawful Fence



Election Day 2014

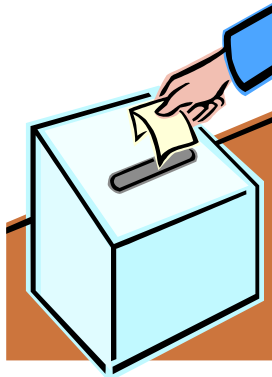


- Virginia Fence Law shaped by:
 - Elected officials
 - Lobbying by Landowners and Agricultural Interests
 - Court Interpretations



History

- October 1850 issue of *Southern Planter*:
- “It is time for the farmers to make a decided stand; refuse to support at the polls men who will not faithfully, unflinchingly represent the interests of agriculture” -- **Sussex County Planter**





Fence & Fence Law

Appearances have
changed with time
but intent has
remained relatively
consistent



English Common Law



Virginia's original statutes were based on Common Law.

Private livestock must be fenced in on public lands
It was the livestock owners' responsibility to fence in his animals to avoid liability.

Common Law Fence Legislation



- 1631 – “Every man shall enclose his ground with a sufficient fence.”

Implication - the notion of what constituted a “lawful” fence was being considered and legislated for the first time in America

Then in 1643 ...

- “that every man shall make a sufficient fence about his *cleared* ground.”

Now the priority for containing livestock was shifted to the Planter.

Virginia General Law had been born



Virginia General Law

- 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 *“substantiall close downe to the bottom”*.
- “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.



Rippon Hall, York River, Virginia. L.J. Cranstone; Virginia Historical Society

Return to Common Law

- 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.”

Return to Common Law

- Thus, VA state Government yielded power regarding fences to respective county governments
- Each county then had the option to choose “General Law” or “Common Law”
 - 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 “*No-Fence Law*”

- The board of supervisors or other governing body in any county...*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....*

Fence-In Localities

- Source is English Common Law
- Property boundary lines have been declared to be lawful fences under § 55-310 of the Virginia Code.
- Livestock owners have absolute duty to fence their animals in.
- ***Check with County Attorney***

Fence-In Counties

Albemarle, Augusta, Bedford, Botetourt,
Buckingham, Campbell, Clarke, Cumberland,
Floyd, Fluvanna, Gloucester, Goochland,
Greene, Halifax, Hanover, King George, King
and Queen, Loudon, Louisa, New Kent, Orange,
Page, Patrick, Pittsylvania, Pulaski,
Rappahannock, Rockingham, Roanoke,
Southampton, Spotsylvania, **Smyth**, Warren,
Washington, Wise, Wythe

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.
- Many counties chose to remain with General Law after 1862.
- Property boundaries are not legal fences, Landowners must fence animals out

Fence-Out Counties

Accomack, Alleghany, Amelia, Amherst, Appomattox, Bath, Bland, Brunswick, Buchanan, Caroline, Carroll, Charles City, Chesapeake, Chesterfield, Craig, Culpeper, Dickenson, Dinwiddie, Essex, Fairfax, Fauquier, Franklin, Frederick, Giles, Grayson, Greensville, Hampton, Henrico, Henry, Highland, Isle of Wight, James City, King William, Lancaster, Lee, Lunenburg, Madison, Matthews, Mecklenburg, Middlesex, Montgomery, Nelson, Newport News, Northumberland, Northampton, Nottoway, Powhatan, Prince Edward, Prince George, Prince William, Richmond, Rockbridge, **Russell**, Shenandoah, Suffolk, Surry, Tazewell, Sussex, Virginia Beach, Westmoreland, York

Fence-Out Example

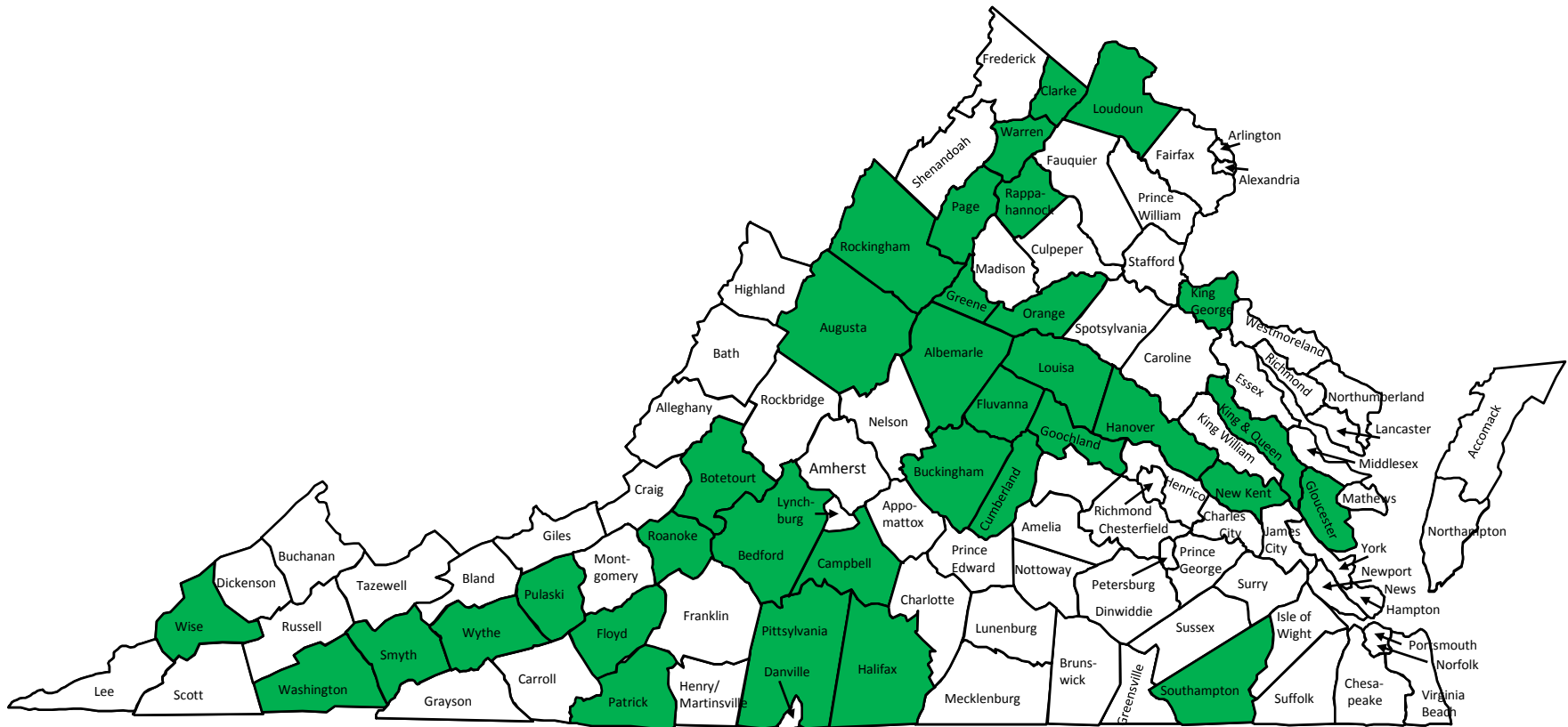
A cattleman in Highland County has a few cows wander into a neighbor's corn field whereby the cattle consume a large quantity of corn and fodder.

Here the question of liability for the damage to the corn becomes two fold. First, Highland 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

Unofficial Virginia Fence In vs Fence Out County Designations



Fence In:

Albemarle, Augusta, Bedford, Botetourt, Buckingham, Campbell, Clarke, Cumberland, Fluvanna, Gloucester, Goochland, Greene, Halifax, Hanover, King George, King and Queen, Loudoun, Louisa, New Kent, Orange, Page, Patrick, Pittsylvania, Pulaski, Rappahannock, Rockingham, Roanoke, Southampton, Spotsylvania, Smyth, Warren, Washington, Wise, Wythe

Fence Out:

Accomack, Alleghany, Amelia, Amherst, Appomattox, Bath, Bland, Brunswick, Buchanan, Caroline, Carroll, Charles City, Chesapeake, Chesterfield, Craig, Culpeper, Dickenson, Dinwiddie, Essex, Fairfax, Fauquier, Franklin, Frederick, Giles, Grayson, Greenville, Hampton, Henrico, Henry, Highland, Isle of Wight, James City, King William, Lancaster, Lee, Lunenburg, Madison, Matthews, Mecklenburg, Middlesex, Montgomery, Nelson, Newport News, Northumberland, Northampton, Nottoway, Powhatan, Prince Edward, Prince George, Prince William, Richmond, Rockbridge, Russell, Shenandoah, Suffolk, Surry, Tazewell, Sussex, Virginia Beach, Westmoreland, York

What Is A Lawful Fence?

The Code of Virginia has, over time, defined what an acceptable lawful fence which “livestock¹ domesticated by man cannot creep through”² is.

¹poultry has remained excluded from the term livestock

²Code of Virginia § 55-306

§ 55-299 Definition of Lawful Fence

1. ≥ 60 inches from top of fence to bottom of ditch for earthen mound fencing
 2. ≥ 42 inches for barbed wire, ≥ 4 strands, substantial support ≤ 12 feet apart w/o bracing
 3. ≥ 42 inches for board, plank or rail with ≥ 3 boards and substantial support
 4. ≥ 36 inches high in a town w/o specific lawful fence requirements
- OR
5. Any fence whatsoever that is,
 - a) ≥ 42 inches high
 - b) Constructed of industry accepted fencing material or technology that appropriately confines or restricts livestock in accordance with § 55-306
 - c) Installed pursuant to industry accepted standards

A cattle guard reasonably sufficient to turn all kinds of livestock.

The Virginia Department of Agriculture and Consumer Services may adopt more stringent standards than these as requirements for lawful fencing.

Legal Fence?



PROBABLY NOT



PROBABLY NOT



YES



YES



Maybe???

Lawful Fence

Generally speaking, American Society of Testing and Materials (ASTM) certification is found on any appropriate livestock fencing materials. This assures that standards for strength and durability have been met.



Summary

- The history and interpretation of Virginia Fence Law can be both fascinating and complex.
- The “No-Fence Law” is probably the most misunderstood pieces of Virginia Fence legislation.
- Meeting the requirements of a “lawful fence” is critically important for enforcement of any of the Virginia Fence related laws.

Any Questions?

