



Confronting the Issues

Boundary and Fencing Laws PFB Policy Development June 2021

Issue

Some say, “good fences make good neighbors.” While privacy concerns often drive considerations in enacting fences in residential and urban areas, rural landowners are often motivated by issues related to livestock. In Pennsylvania, such issues are generally governed by the state’s Fence Law, which addresses legal duties to erect and maintain fences for farms and ranches. Relatedly, Pennsylvania’s law on trespassing livestock provides procedures regarding costs for damage to property, interim care, and returning of such animals.

Questions

1. Is the state’s Fence Law sufficient and presently relevant in addressing issues between farm properties?
2. Should the state’s Fence Law apply to non-farm and ranch properties?
3. Is the state’s law on trespassing livestock practical and effective in dealing with such issues?

Background

Pennsylvania “fence law” dates back to the Commonwealth’s colonial days. Adopting English common law, Pennsylvania landowners were required to keep livestock from trespassing onto a neighbor’s property. In 1700, the state enacted a formal law, flipping the burden to landowners to defend their crops by “fencing out” wandering livestock. In 1842, the pendulum swung back, as the state reverted to a “fence in” rule, requiring livestock owners to confine their livestock to avoid liability, but added a provision requiring neighbors to share the costs of enacting fences under certain circumstances.

The state’s modern-day fence law dates to 1905. Last amended in 1955, the state fence law requires farm and ranch property owners of improved and occupied land to equally erect and maintain property line fences unless a landowner has consented otherwise. If an owner fails to satisfy such duties, the aggrieved owner can request a “fence viewer” be appointed to address the fence dispute. If the fence viewer finds that the fence is “sufficient,” the complaining neighbor must pay for certain costs related to the fence viewer, subject to a \$25 maximum. If the fence is found “insufficient,” the fence viewer must report to the local magistrate whether the current fence can be repaired or must be rebuilt, along with the probable costs arising from such work. The delinquent landowner then has 40 days to pay their share of such costs. Exceptions to the fence law include a prohibition against requiring any landowner to build or repair a fence from December through March, and inapplicability to railroad companies.

Until the late 1990s, it was generally believed that the fence law applied equally to urban and suburban properties, however, in *Fogle v. Malvern Courts, Inc.* the Pennsylvania Supreme Court ruled that the state fence law applied only to fences located on “farms or ranches.” In the case at issue, a landowner in a residential area attempted to require a mobile-home park and residential neighbor to pay for the costs of a fence that neither of the other two neighbors wanted to build. Noting the extensive history of the fence law as it relates to livestock, the Court concluded that “the Fence Law addresses the sharing of costs for fences constructed on farms and ranches, [and] does not apply to single-family residential neighborhoods in typical urban or suburban settings.”

In 2017, the state Superior Court addressed a fence law challenge involving two farms, one of which did not contain any livestock. The non-livestock farm asserted that it had no duty to pay for fence repair costs mandated by a fence viewer since it did not own any livestock. The court concluded that the fence law still applied since the “containment of livestock [was still] a genuine concern” to the livestock-owning farm. Although the 2017 case was unpublished and thus did not create binding precedent, it does provide insight on how Pennsylvania courts may subsequently view duties under the state’s fence law.

Apart from responsibilities to erect and maintain a fence, Pennsylvania landowners should also be aware of the state’s law on trespassing livestock. Under the law, if a neighboring landowner or tenant of improved land discovers trespassing livestock, they are allowed to notify the local constable, who is then required to impound the livestock with either the discovering person or another responsible entity. Within 24 hours, the constable must give notice to the livestock owner, who must pay for any land damages, care costs, and constable fees within four days to have the livestock returned. If the livestock owner fails to pay such costs, the district magistrate is required to direct three disinterested land owners to inspect and value any damage cause for subsequent referral to the magistrate.

Farm Bureau Policy

PFB, page 58, Surveying Standards

We recommend:

1. Surveyors be held liable for any damages they cause on agricultural land, and landowners be notified prior to any land surveying on farmland. ('15)
2. All new permanent land survey markers be buried at least four feet deep and be GPS activated. ('15)
3. All temporary, aboveground survey markers be at least six feet tall and consist of reflective material. ('15)

PFB, page 64, Agricultural Trespass

We recommend no statute be created to make large livestock escapes a criminal offense. ('15)

AFBF, page 176, Federal Lands / General Management

With regard to general management policies, we support participation of federal agencies with private landowners in building and maintaining line fences between federal land and adjacent land. Federal land management agencies should also conform to state fencing laws;