



Overview of Virginia Fence Law

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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." 1631

- 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." 1643
- 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."

Acts of the General Assembly, 1862

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Acknowledgement: *This document is a reformatted version of one developed by Jason Carter when an agent with the Virginia Cooperative Extension Service*



What's considered a lawful fence?



§ 55.1-2804. Description of lawful fence.

Every fence shall be deemed a lawful fence as to any domesticated livestock that could not creep through such fence, if it is:

1. At least five feet high, including, if the fence is on a mound, the mound to the bottom of the ditch;
2. Made of barbed wire, at least 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 are also fixed;
3. Made of boards, planks, or rails, at least 42 inches high, consisting of at least three boards firmly attached to posts, trees, or other supports substantially set in the ground;
4. At least three feet high, if such fence is within the limits of any town whose charter neither prescribes, nor gives to the town council power to prescribe, what shall constitute a lawful fence within such corporate limits; or
5. Any other fence, except as otherwise described in this section, if it is:
 - 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 domesticated livestock; and
 - c) Installed pursuant to generally acceptable standards so that applicable domesticated livestock 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 domesticated livestock.

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 regulations regarding lawful fencing consistent with this section to provide greater specificity as to the requirements of lawful fencing. The absence of any such 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, § 55-299; 2007, c. 574; 2019, c. 712.)



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.

§ 55.1-2808. 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, a street, or an 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, § 55-304; 2019, c. 712.)

§ 55.1-2809. 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. Such 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, § 55-305; 1992, c. 483; 2019, c. 712.)

Sections § 55.1-2808 and § 55.1-2809 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.

§ 55.1-2810. Damages for trespass by animals; punitive and double damages.

A. If any domesticated livestock enters into any grounds enclosed by a lawful fence, as defined in §§ 55.1-2804 through 55.1-2807, the owner or manager of any such animal shall be liable for the actual damages sustained.

B. Punitive damages may be awarded but shall not exceed \$20 in any case.

C. For every second and subsequent 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, § 55-306; 1979, c. 486; 2019, c. 712.)

§ 55.1-2811. Lien on animals.

If the court enters judgment for the owner or tenant of the grounds enclosed by a lawful fence pursuant to § 55.1-2810, the landowner shall have a lien upon such animal. Upon entry of the judgment, the court shall issue a writ of fieri facias pursuant to § 8.01-478, and the animal found to have trespassed shall be levied upon by the officer to whom such execution was issued, who shall sell such animal, as provided in Chapter 18 (§ 8.01-466 et seq.) of Title 8.01.

(Code 1950, § 8-877; 1977, c. 624, § 55-307; 2019, c. 712.)

§ 55.1-2812. Impounding animals.

Whenever any animal is found trespassing upon any grounds enclosed by a lawful fence, the owner or tenant of such enclosed grounds shall have the right to take up and impound such animal until the damages provided for pursuant to this article have been paid, or until such animal is taken under execution by the officer as provided by § 55.1-2811. 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, § 55-308; 2019, c. 712.)

§ 55.1-2813. Duty to issue warrant when animal impounded.

An owner or tenant of lands trespassed upon by any domesticated livestock, within three days after the taking up and impounding such animal unless the damages are otherwise settled, shall 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 claimed by him. The court, or the clerk thereof, shall issue such warrant, to be made returnable at as early a date, but not less than three days after such issuance, 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, § 55-309; 2019, c. 712.)



“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”.

§ 55.1-2814. How governing body of county may make local fence law.

The board of supervisors or other governing body in any county, after publishing notice as required by subsection F of § 15.2-1427, may, by ordinance, declare the boundary line of each lot or tract of land or any stream in such county, any magisterial district of such county, or any selected portion of such county, to be a lawful fence as to any or all domesticated livestock, or may declare any other kind of fence for such county, magisterial district, or selected portion of the county than as prescribed by § 55.1-2804 to be a lawful fence, as to any or all of such animals.

(Code 1950, § 8-880; 1977, c. 624, § 55-310; 2019, c. 712.)

Fence-In

- Source is English Common Law
- Boundary lines have been declared to be lawful fences under § 55.1-2814 of the Virginia Code. Landowners must fence their animals in.
- In 1862, most eastern VA counties enacted this option

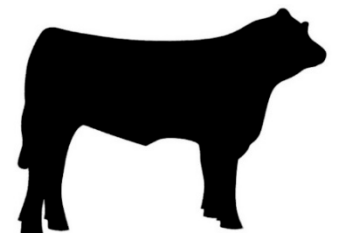
Fence-In Example

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 § 55.1-2814

The infamous "No-Fence Law" gives certain authority to localities determining their own fence law status, but successive laws limit other possible implications of § 55.1-2814.

§ 55.1-2815. Effect of such law on certain fences.

A declaration made by ordinance adopted pursuant to § 55.1-2814 shall not apply to relieve the adjoining landowners from making and maintaining their division fences, as defined by § 55.1-2804; however, Article 6 (§ 55.1-2821 et seq.) shall apply to such division fences.

(Code 1950, § 8-881; 1977, c. 624, § 55-311; 2019, c. 712.)

§ 55.1-2816. Application to railroad companies.

No action taken under the provisions of § 55.1-2814 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, § 55-312; 2019, c. 712.)

§ 55.1-2817. No authority to adopt more stringent fence laws.

Nothing in § 55.1-2814 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 § 55.1-2804.

(Code 1950, § 8-883; 1977, c. 624, § 55-313; 2019, c. 712.)

§ 55.1-2818. Effect on existing fence laws or no-fence laws.

Nothing in § 55.1-2814 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, by ordinance and in accordance with the provisions thereof, nor shall the provisions of § 55.1-2814 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 in an ordinance adopted by the board of supervisors or other governing body of such county entered pursuant to § 55.1-2814.

(Code 1950, § 8-884; 1977, c. 624, § 55-314; 2019, c. 712.)

§ 55.1-2820. When unlawful for animals to run at large.

It is unlawful for the owner or manager of any domesticated livestock 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 in which such boundaries have been constituted and are a lawful fence.

(Code 1950, § 8-886; 1977, c. 624, § 55-316; 1979, c. 486; 2019, c. 712.)



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.

§ 55.1-2821. 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 chooses to let his land lie open or unless they agree otherwise.

(Code 1950, § 8-887; 1970, c. 713; 1977, c. 624, § 55-317; 2005, c. 873; 2019, c. 712.)

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 § 55.1-2821 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.

§ 55.1-2822. When no division fence has been built.

If no division fence has been built, either one of the adjoining landowners may give notice in writing of his desire and intention to build such fence to the landowner of the adjoining land, or to his agent, and require him to build his half of such fence. The landowner so notified may, within 10 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. If the landowner giving the original notice subsequently builds such division fence and the landowner who has so chosen to let his land lie open, or his successors in title, subsequently encloses his land, he, or his successors, shall be liable to the landowner who built such fence, or to his successors in title, for one-half of the value of such fence at the time such land was so enclosed, and such fence shall thereafter be deemed a division fence between such lands.

If, however, the person so notified fails to give notice of his intention to let his land lie open, and fails to agree, within 30 days after being so notified, to build his half of such fence, he shall be liable to the person who builds the fence for one-half of the expense, 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 recordation of the notice in the clerk's office of the county in which the land is located.

(Code 1950, § 8-888; 1977, c. 624, § 55-318; 1985, c. 486; 2019, c. 712.)

Does “lie open” mean forever? ***The key to § 55.1-2822 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.***

§ 55.1-2823. When division fence already built.

When any fence (i) that has been built and used by adjoining landowners as a division fence, or any fence that has been built by one landowner and the other landowner is afterwards required to pay half of the value or expense of such fence under the provisions contained in this article, and (ii) that has thereby become a division fence between such lands, becomes 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 repair his half of such fence. If the landowner receiving written notice fails to repair his half within 30 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 of such repairs.

(Code 1950, § 8-889; 1977, c. 624, § 55-319; 2019, c. 712.)

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.

§ 55.1-2823 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 § 55.1-2823 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 § 55.1-2822, 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.

