

Responsibility for Fence Building in Texas*

In this day and age, who doesn't have legal questions about fence building? Do you know your rights and obligations when it comes to your fences? Do you know your *neighbor's* rights and obligations?

An excellent and quick guide for your fencing questions can be found in a publication from our friends at Texas A&M Agrilife Extension entitled, *Five Strands: A Landowner's Guide to Fence Law in Texas*.

This month, the Ranchers and Landowners Association of Texas takes a quick look at landowner's responsibilities when it comes to fence building.

First, it is important to have an accurate survey that shows the correct boundary line of your property. This can avoid future headaches – and possible court battles! – down the road. Second, if the property is fronted by an interstate or state highway, and you have any type of livestock, a landowner is required to erect and maintain a fence to adequately prevent such livestock from being able to enter the highway right-of-way.

Sometimes a landowner building a fence along a boundary line must clear brush on a neighbor's property. If this is necessary, the landowner should always seek permission from the neighbor before entering their property and before clearing any brush without permission. Entering a neighbor's property and removing brush without advance permission could be considered trespassing and could expose the landowner to damages. It is always better to ask for permission ahead of time. If permission is denied, the landowner may have to back the fence up onto her/his property.

Then there are the inevitable questions about fence cost-sharing with a neighbor. A landowner in Texas has no legal obligation to share in the building or maintenance costs of a fence built by a neighbor, unless the landowner has agreed to do so. The Texas Supreme Court has held that, "if one proprietor [enclosed] his land, putting his fence upon his line, the owner of the adjacent land may avail himself of the advantage thereby afforded him of [enclosing] his own land without incurring any liability to account for the use of this neighbor's fence."¹

Further, if a neighbor landowner does not participate in the costs of erecting the fence, it is *not* considered a common fence. Rather, it is the exclusive property of the builder. Similarly, if a fence is built not on the property line, but instead on one landowner's property, then the fence is considered to be the exclusive property of that landowner.

If neighbors agree that each will maintain a portion of the fence, such agreement is legally binding and can be enforced.² While such agreements may be rare, they may be useful for neighboring landowners to specify their rights and obligations regarding fences before an issue

arises. Once neighbors reach a friendly agreement, it should be written down and a copy given to each owner.

*Excerpts taken from Five Strands: A Landowner's Guide to Fence Law in Texas, Texas A&M Agrilife Extension, by James D. Bradburry, PLLC.

¹ *Nolan v. Mendez*, 14 S.W. 167, 168 (Tex. 1890)

² *Adair v. Stallings*, 165 S.W. 140, 141-142 (Tx. Civ. App. – Amarillo 1914, writ dism'd)