

Handbook of Florida Fence and Property Law: Background and Definitions¹

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Foreword

With approximately 19,000 livestock farms in the state, along with horse farms, orange groves, soybeans, sugarcane, cotton, peanuts, and many other agricultural and livestock facilities, livestock and farming have a significant impact on Florida's economy. Florida's agricultural economy has been required to co-exist with rapid population and commercial growth in the state over the last twenty-five years. Conflicts between these interests bring to prominence issues such as the rights and responsibilities of adjoining landowners, farmers, and property owners in general. Due to the added importance placed on these areas of real property, the legal aspects of fences in the state of Florida have taken on significant importance.

This handbook is designed to inform property owners of their rights and responsibilities in terms of their duty to fence. Discussed areas include a property owner's responsibility to fence when livestock is kept on the property, the rights of adjoining landowners to fence, the placement of fences, encroachments, boundary lines, easements, contracts, nuisances, and a

landowner's responsibilities towards persons who enter his property.

This handbook should provide a basic overview of many rights and responsibilities that farmers and farmland owners have under Florida's fencing and property law. Readers may value this handbook because it informs them about these rights and responsibilities. However, the reader should be aware that because the laws, administrative rulings, and court decisions on which this booklet is based are subject to constant revision, portions of this booklet could become outdated at any time. This handbook should not be viewed as a comprehensive guide to fencing and property laws. Additionally, many details of cited laws are left out due to space limitations. This handbook should not be seen as a statement of legal opinion or advice by the authors on any of the legal issues discussed within. This handbook is not a replacement for personal legal advice, but is only a guide to inform the public on issues relating to fencing and property laws in Florida. For these reasons, the use of these materials by any person constitutes an agreement to hold the authors, the Institute of Food and Agricultural Sciences, the

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Introduction

Upon becoming a state, Florida adopted the traditional English common law rule requiring owners of livestock to keep their animals off neighboring unenclosed lands. The common law is based primarily on three rules: (1) a landowner is entitled to have land fenced or unfenced as the land owner pleases; (2) each person's land, whether fenced or unfenced, is considered by the law as enclosed; and (3) livestock and animal owners are required to keep their animals on their own land (see Fla. Stat. section 588.15; *Fisel v. Wynns*, 667 So.2d 761 [1996]; *Rockow v. Hendry*, 230 So.2d 717 [2d DCA 1970]; *Seaboard v. Maige*, 109 Fla. 229, 147 So. 215 [1933]; *Selby v. Bullock*, 287 So.2d 18 [1973]). Some areas of the common law that have been changed in Florida relate to a landowner's duty to trespassers and the duty imposed upon owners of junkyards, private game preserves, railroad companies, and in some municipalities, upon pool owners to fence.

Florida is now a "closed range" state and has adopted the rule of strict liability for trespassing livestock. Courts have awarded greater damages for injury caused by livestock roaming on public roads (see 1–3 Agricultural Law section 3.12, Matthew Bender & Company, Inc., a member of the Lexis Nexis Group [2005]).

What is a fence?

A fence is generally defined as a visible, tangible obstruction raised between two tracts of land so as to separate, protect, and enclose the land. In Florida, the

legislature has provided for two types of fences: general and legal.

A general fence is a fence that must be "substantially constructed," or made from rails, logs, post and railing, iron, steel, or other such material, and be not less than five feet high. To the extent of two feet from the ground, the material used to construct the fence should not have gaps greater than four inches. If a general fence is constructed in a ditch that is at least four feet wide, the fence height can be measured as five feet from the bottom of the ditch to the top of the fence (Fla. Stat. section 588.01). The statutory requirements of a general fence to prevent the intrusion of swine will constitute a legal fence in those remote instances where the running of swine is legal (Fla. Stat. section 588.011). Currently, most counties in Florida prohibit the free running of swine.

A legal fence is a fence that is at least three feet high and made of barbed or other soft wire of no less than three strands stretched securely on supports that are up to twenty feet apart or, when using battens, up to sixty feet apart for non-electric and one hundred and fifty feet for electric using high tensile wire. Other materials may be used if the requirements are substantially met. A legal fence may include a gateway if it meets the standards required of a legal fence and is constructed with a livestock guard at least six feet wide extending to each end of the opening (Fla. Stat. section 588.011).

What are the requirements for legally enclosed land under Florida law?

Land is legally enclosed, or posted, when a legal fence encloses it and its boundaries display posted notice to the public. The law views any part of the land bounded by ocean, gulf, bay, river, creek, or lake as legally enclosed (Fla. Stat. section 588.09). Owners of legally enclosed land must maintain the condition of the fence and the posted notice (Fla. Stat. section 588.11; see also 27 Fla. Jur 2d section 4).

What are the requirements for posted notice on a fence to assure it is in compliance with Florida law?

Posted notice on fences must prominently display, in letters of at least two inches in height, the word "posted" and the name of the owner, lessee, or occupant of the land. The notices must be placed no less than five hundred feet apart, at every corner, and at any gate or opening of fence. Similar notice is required for land bounded by water (Fla. Stat. section 588.10).

A legal fence is no guarantee

Having a "legal fence" does not automatically relieve a land owner from all potential liability. In *Florida Bd. of Educ. v. Andrews*, the 1st DCA of Florida noted that a legal fence is not necessarily an "adequate fence," and compliance with Fla. Stat. chapter 588 did not resolve the question of liability (903 So.2d 1048 [1st DCA 2005]). In that case, a bull broke through a fence and collided with a vehicle, resulting in the driver's death (*id.*). The court reversed and remanded the case for a new trial to address the issue of negligence, and answer the question of whether the defendant constructed an adequate fence to restrain the bull (*id.*).

Further Information

Circular 1242, Handbook of Florida Fence and Property Law
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