

Handbook of Florida Fence and Property Law: Boundaries and Possession¹

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Preface

With approximately 19,000 livestock farms in the state, along with horse farms; orange groves; croplands of soybeans, sugarcane, cotton, and 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 coexist with rapid population and commercial growth in the state over the last twenty-five years. Conflicts between these interests bring prominence to 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, placement of fences, encroachments, boundary lines, easements, contracts, nuisances, and a landowner's responsibilities towards persons who enter his or her property.

This handbook is intended to provide a basic overview of the 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court decisions on which this booklet is based are subject to constant revision, portions of this booklet could become outdated at any time.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 educate and 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 Center for Agricultural and Natural Resource Law, and the University of Florida harmless for any liability claims, damages, or expenses that may be incurred by any person as a result of reference to or reliance on the information contained in this book.

Readers wishing to find further information from the Florida Statutes may access those statutes online at <http://www.leg.state.fl.us/STATUTES/>.

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Boundaries and Possession

What is the distinction between land ownership and possession?

A person who holds legal or equitable title to property *owns* that property, whereas a person who exercises control and dominion over property *possesses* it. The distinction is important in disputes over adverse possession, boundary by agreement, and boundary by acquiescence, as discussed herein.

What are the ways to show land ownership?

The best and most important way to check ownership is to make sure the description of land on the deed matches the land you possess. This information can be obtained through the County's Official Records or Property Appraiser's Office. In certain cases, possession of land may show ownership by proof of certain acts, such as:

- Cultivating or improving the land or part of a single lot of land;
- Protecting the land by a substantial enclosure, such as a fence;
- When, although not enclosed, the land has been used for the supply of fuel or fencing timber for husbandry or for the ordinary use of the occupant; and
- When a lot or single farm has been partly improved, the part that has not been cleared or enclosed according to the usual custom of the county is to be considered as occupied for the same length of time as the part improved or cultivated.

Fla. Stat. § 95.16(2) (2014).

What are the legal problems of adjoining landowners?

In dealing with land possession among adjoining owners, most of the legal problems center around two areas:

1. Encroachments
2. Overlaps or hiatus

What are encroachments?

An encroachment occurs when an individual occupies any portion of land above or below the surface beyond what is described in the deed. It is important to note that the individual who has encroached upon the other person's land does so without either an easement or agreement to do so, or any written instrument, judgment, or decree giving title to the encroached land (1 Florida Jurisprudence 2d *Adjoining Landowners* section 11 [2014]).

If my neighbor puts up a fence that encroaches on my land, how should I react? What are my legal rights?

Where there is no dispute or mistake regarding the true boundary line and someone builds a fence that clearly encroaches upon your land, immediately notify that person of the encroachment in writing. In such cases, the encroaching person is required to remove the fence. If the individual refuses to remove the fence, you may bring an action to eject the individual from your property. Providing written notice to the encroaching party may prevent that party from claiming the fence is validly placed based upon an allegation of doubt or uncertainty regarding the true boundary line. The existence of a fence could constitute evidence of the required doubt or uncertainty as to the true boundary in a boundary by acquiescence dispute (discussed further below); however, a fence alone is insufficient to prove doubt and establish for boundary by acquiescence. *Compare Carroll v. Fordham*, 781 So. 2d 1156, 1157 (Fla. 1st DCA 2001) and *McDonald v. Givens*, 509 So. 2d 992, 993 (Fla. 1st DCA 1987) with *Hearn Properties, Inc. v. Cruce*, 20 So. 3d 877, 879 (Fla. 1st DCA 2009) (receding from *Carroll* and *Givens*, holding that “a claim of boundary by acquiescence, the existence of a fence . . . alone [is] insufficient to establish any dispute or uncertainty as to the location of the boundary”).

The more complex types of encroachment disputes occur when the alleged encroacher asserts the defense(s) of *boundary by agreement* and *boundary by acquiescence*.

Boundary by Agreement

If a landowner builds a fence that encroaches on the true boundary line, he or she may assert the defense of “boundary by agreement” and ask the court to uphold the validity of the fence.

The three important aspects of this defense are:

1. Uncertainty or doubt as to the true boundary line,

2. An agreement that a certain line will be treated by the parties as the true line, and
3. Subsequent occupation by the parties in accordance with agreement for a period of time sufficient to show a settled recognition of the line as a permanent boundary.

E.g., Watrous v. Morrison, 14 So. 805, 807 (Fla. 1894); *Campbell v. Noel*, 490 So. 2d 1014, 1016 (Fla. 1st DCA 1986); 1 Fla. Jur 2d Adjoining Landowners § 48 (2014). In *Campbell*, two adjoining landowners were uncertain of the true common boundary between the two tracts. One landowner, Pate (P), surveyed his land. 490 So. 2d at 1015. At this time, P's surveyor met with the adjoining landowner, Campbell (C), and C's surveyor. *Id.* Based on this survey, P erected a fence that ran the length of the agreed boundary between the adjoining tracts. *Id.* The fence remained without dispute for five years during which time C patched and repaired P's fence several times. *Id.* After five years, C suspected an encroachment from another one of his neighbors and had his land surveyed. *Id.* The survey revealed that P's fence encroached C's property by sixty feet over the actual boundary line. *Id.* Six years later, C sued to eject P from the land. *Id.* at 1015–16. The court used boundary by agreement to allow P to maintain his fence. *Id.* at 1016. First, the court found that genuine uncertainty as to the true boundary line could exist even without open disagreement between the adjoining landowners. *Id.* This uncertainty was shown by C's testimony stating that he did not know where the boundary line was at the time P had the land surveyed. *Id.* Second, the court found that C's actions in maintaining the fence implied agreement to treat the fence as the boundary line. *Id.* Third, the court found that the parties had recognized the boundary line by occupying the land for a sufficient amount of time. *Id.* Concerning the time requirement, the court stated that boundaries by agreement have been found when parties occupied the land for as little as two years. *Id.*

Boundary by Acquiescence

Two important elements of this are:

1. A dispute or uncertainty from which it can be implied that both parties are in doubt as to the true boundary line (meaning both landowners lack actual knowledge of the true boundary), and
2. Continued occupation and acquiescence in a line other than the true boundary for the period of the statute of limitations, or more than seven years.

E.g., King v. Carmen, 237 So. 2d 26, 28 (Fla. 1st DCA 1970); *Givens*, 509 So. 2d at 993; 1 Fla. Jur 2d Adjoining Landowners § 51 (2014); Fla. Stat. § 95.12 (2014). In the absence of direct evidence of a dispute, all five district courts in Florida and the Florida Supreme Court agree that mere construction of a fence does not suffice to establish the element of uncertainty in a boundary dispute case. *See, e.g., Van Meier v. Kelsey*, 91 So. 2d 32 (Fla. 1956). Boundary by agreement and boundary by acquiescence both involve a disputed boundary line (note that if existence of a boundary line in a particular location is without dispute, the person who is encroaching upon the land cannot claim possession of the land), but boundary by acquiescence requires that the land must be encroached upon for at least seven years. In other words, action brought to recover property after seven years of encroachment will probably be denied.

In the case of *McDonald v. Givens*, the owner before McDonald (M) had erected a fence, which remained on the property for at least fifty years. 509 So. 2d at 993. Since the fence was erected, M and her predecessors, along with other individuals residing in the area, considered the fence to be the boundary between the two properties. *Id.* Thirteen years after M had obtained title to her property, Givens (G) purchased property that shared a common boundary with M's property. *Id.* G's survey disclosed that M's fence was encroaching upon G's property as described in their deeds and the true boundary line was eastward of the fence. *Id.* The court found that while no direct evidence was available to show uncertainty over the boundary line at the time of the fence's erection, without any other explanation for its specific location, the placement and duration of the fence itself is sufficient evidence to show doubt and establish for boundary by acquiescence. *Id.* *See also McDonald v. O'Steen*, 429 So. 2d 407, 409 (Fla. 1st DCA 1983). Furthermore, the court stated that while G protested the current fence, no evidence existed that any of the owners before G protested the fence's existence as an encroachment. *Id.* The fence was maintained for thirty years, without dispute, before G gained title to the property. *Id.* This surpassed the necessary seven years needed under the statute of limitations. *Id.* The court found a boundary by acquiescence, fulfilled by the two elements, and G's protest was denied. *Id.* at 993–94.

Miscellaneous Boundary Court Cases

While the above two cases are representative of the different situations in which boundary by agreement and boundary by acquiescence apply, many other cases exist that also

show their application. A list of a few additional cases is as follows:

- *Euse v. Gibbs*, 49 So. 2d 843 (Fla. 1951), indicates that when adjoining landowners settle a boundary dispute by agreement and the agreed boundary is different than as described in the deed, the taxes paid on the property actually defined in the deed will act as a payment on the taxes of the disputed land.
- *Reil v. Myers*, 222 So. 2d 42 (Fla. 4th DCA 1969), clarifies that a verbal agreement that a certain line is the boundary is legal because it merely defines boundaries and is not required to be in writing because title to the real estate is not passed.
- *McDonald v. O'Steen*, 429 So. 2d 407 (Fla. 1st DCA 1983), provides a discussion of the application of boundary by acquiescence when there is little direct evidence of an actual dispute over the boundary.
- *Sanders v. Thomas*, 821 So. 2d 1214 (Fla. 1st DCA 2002), refuses to apply the Givens rule for doubt or uncertainty in cases of boundary by acquiescence when surveys over the course of the encroachment showed the actual boundary line.
- *Jones v. Muldrow*, 921 So. 2d 762 (Fla. 1st DCA 2006), the court affirmed that the elements of boundary by acquiescence are (1) uncertainty or dispute as to the location of the true boundary, (2) location of a boundary line by the parties, and (3) acquiescence in the location for the prescriptive period. See also *Sembler Marine Partners, Ltd. v. Skidmore*, 842 So. 2d 1003, 1005 (Fla. 4th DCA 2003).

Summary

If your title clearly describes your land and, according to your deed and your neighbor's deed, your neighbor's fence is clearly encroaching upon your land, you should immediately notify your neighbor in writing of the encroachment. Your neighbor is required to remove this encroachment.

If the location of the true boundary line is unclear from both your deed and your neighbor's deed, avoid future dispute by notifying your neighbor of the ambiguity, calling a surveyor, and clarifying your boundary lines. In the case where you think boundary by agreement or boundary by acquiescence may apply to the dispute, think of the aspects of each and whether they actually apply to your case.

Remember the three aspects of *boundary by agreement*:

1. Uncertainty or doubt as to the true boundary line

2. Agreement that a certain line will be treated by the parties as the true boundary line

3. Subsequent occupation by the parties in accordance with the agreement for a period of time sufficient to show settled recognition of the line as a permanent boundary

Consider also the two aspects of *boundary by acquiescence*:

1. A dispute or uncertainty from which it can be implied that both parties are in doubt as to the true boundary line

2. Continued occupation and acquiescence in a line other than the true boundary for a period of more than seven years (as required by the statute of limitations)

Further Information

Handbook of Florida Fence and Property Law <http://edis.ifas.ufl.edu/>

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