

Handbook of Florida Fence and Property Law: Glossary¹

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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court decisions on which this booklet is based are subject to constant revision, portions of this booklet could become outdated at any time.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/>.

1. This document is FE112, one of a series of the Food and Resource Economics Department, UF/IFAS Extension. Original publication date November 1999. Revised December 2006, August 2010, November 2014, and November 2018. Visit the EDIS website at <https://edis.ifas.ufl.edu> for the currently supported version of this publication.
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Acknowledgments

We wish to acknowledge Susan Gildersleeve at the University of Florida for her assistance in editing this handbook.

Glossary

Disclaimer: *The following definitions are not legal standards or opinions. They are generic summaries to assist the reader in understanding this document's contents. For further questions regarding any of the topics contained herein, please seek the expertise of a licensed attorney.*

Acquiescence. Conduct that implies agreement or consent; it is usually an acceptance through silence, but it may also occur when an agreement may be inferred.

Adjoining landowners. Individuals whose lands are separated by a common boundary line.

Adverse possession. Acquiring title to land against the record owner through uninterrupted possession of the land for at least seven years. For possession to be adverse against the record owner, it must be actual, visible, open, notorious, hostile, definite, and exclusive.

Attractive nuisance doctrine. A person whose property has a dangerous instrumentality, machinery, or something similar, that is likely to attract children has a duty to protect those children from the danger.

Boundary by acquiescence. Occurs when there is (1) a dispute from which it can be implied that both parties are in doubt as to the true boundary, and (2) continued occupation and acquiescence in line other than the true boundary for a period of more than seven years (as required by the statute of limitations).

Boundary by agreement. Occurs when there is (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, and (3) subsequent occupation by the parties in accordance with agreement for a period of time sufficient to show settled recognition of the line as a permanent boundary.

Color of title. A claim founded on a written instrument, such as a deed, will, judgment, or decree, which is usually faulty and unknown.

Common law. Law determined by the courts or custom as opposed to statutory law or legislative-made law.

Conservation easement. Express easement to keep a piece of property from further development; limits liability of owner to visitors admitted free of charge for recreational purposes.

Dangerous instrumentality. Appliances, machinery, or things, natural or man-made, which are dangerous by nature.

Deed. A written instrument used to transfer or convey land ownership that describes the land conveyed.

Easements. The right to use the land of another for a purpose that does not interfere with the landowner and does not involve the sharing of profits from the land. See also **conservation easement**, **prescriptive easement**, and **eminent domain**.

Eminent domain. The power of government to take private property for public use with just compensation.

Encroachments. An individual who occupies a portion of land beyond what is described in the deed.

Fence. Structure erected to enclose property. See also **general fence** and **legal fence**.

General fence. Enclosure constructed with rails, logs, post and railing, iron, steel, or other material, and not less than five feet high.

Injunction. A court order preventing or restraining a person from doing a certain act which is injurious and unfair to the person seeking the injunction.

Invitee. One who comes upon the land of another by invitation.

Junkyard. A scrap metal processing facility; or, a place to keep scrapped, wrecked, ruined, or dismantled machinery, motor vehicles, or other such items.

Legal fence. At least three feet high and made of barbed or other wire consisting of not less than three strands of wire stretched securely on posts, trees, or other supports which are not more than twenty feet apart.

Licensee. A person who is not a customer, nor a servant, nor a trespasser, and does not stand in any contractual relation with the owner of the premises, and who enters upon the property of another for the person's own convenience, benefit, or gratification.

Livestock. Animals of the equine, bovine, or swine class, including goats, sheep, mules, horses, hogs, cattle, ostriches, and other grazing animals.

Misdemeanor. A class of criminal offenses which are less serious than a felony and therefore have less serious penalties.

Negligence. Lack of care; the failure to perform an established duty or the failure to show the degree of care required by the situation, which results in injury. Also, the failure to do something that a reasonably prudent person would have done in a similar situation.

Nuisance. Anything that annoys or disturbs the free use or enjoyment of one's property, or that renders its ordinary physical occupation uncomfortable.

Prescriptive easement. Rights less than full ownership to land based on long-term use or enjoyment rather than agreement or statutory methods.

Recreational land. When a person opens his land to the public, free of charge, for hunting, fishing, swimming, etc.

Right-of-way. A right of passage established by usage, contract, or necessity; the right of one or more persons to pass over the land of another.

Survey. A written description measuring the exact dimensions of a piece of land, including the location of its exact boundaries.

Trespasser. A person who enters upon the property of another without the owner's permission.

Further Information

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

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