

on the use and enjoyment of lands within a common enclosure such as penalties, impounding and liens related to trespassing stock. If you refer to the example in the first question and answer, each landowner can form a written agreement that spells out where cattle can graze or how much damages are paid if one's cattle escapes onto the other's property.

**Q:** If a person signed an agreement and the property changes ownership, is the agreement still enforceable?

**A:** After the agreement is signed it is binding on the purchaser, his heirs and future purchasers of the property if the purchaser had notice. The best way to place prospective purchasers on notice is to record the agreement where deeds are recorded in your county.

**Q:** How long would the agreement stay in effect?

**A:** Between November 1 and January 1 of any given year a person can notify in writing of their intention to terminate participation. At that point, the agreement would terminate after ninety days from the service of the notice.

### **Domestic Pets**

**Q:** Are dogs allowed to run-at-large outside of fences?

**A:** No, dogs must be kept confined and are not allowed to run on other people's property unless the dogs are going to and from a hunt or they are being used to drive livestock.

### **Criminal Offenses**

**Q:** Is it a crime for someone to pull down a fence or leave a gate open without permission of the owner?

**A:** Yes, a class C misdemeanor.

### **Urban Landowners**

**Q:** Do urban residents with property bordering farmland have to abide by fence statutes?

**A:** The law is not specific to what type of landowner you are.

### **Vehicle Accidents**

**Q:** Is it true that if you hit a cow, horse or other livestock, you have to buy the animal or pay damages?

**A:** Not unless you were negligent in hitting the animal based upon a reasonable person's standard. Negligence would be based upon speed, recklessness or some other factor.

### **Highway Fences**

**Q:** Are property owners responsible for interstate fences when their land adjoins an interstate?

**A:** Interstate fences were built twelve inches from the property line. This was done intentionally to ensure that the fences would never be perceived as property line fences. Because of this, it is the farmer's responsibility to keep livestock fenced in. The interstate fence is adequate enough in most situations to confine livestock but as the fence needs repair or becomes dilapidated, the Tennessee Department of Transportation (TDOT) is not obligated to maintain the fence and is not liable if the livestock escape. TDOT will send a maintenance crew out to repair fences when they are called but only on a priority basis.

### **Railroad Fences**

**Q:** Are property owners responsible for fences when their property adjoins a railroad?

**A:** Yes, railroad companies are not required by law to build or maintain a fence running alongside a railroad. However, the companies are required to construct cattle gaps or stops if the track runs through property with livestock. The gaps must be built where the track enters and exits the fenced space.

**Q:** What if livestock are on the track running through private property?

**A:** The train engineer is required to blow the whistle and apply brakes in order to prevent, if reasonably possible, striking the livestock.



*For further information on Tennessee's fence laws contact:*

Tennessee Farm Bureau Federation  
Public Affairs Department  
P.O. Box 313  
Columbia, TN 38402-0313  
931-388-7872

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# Tennessee Fence Laws



If you drive around the highways and back-roads of our great state you will notice that Tennessee's landscape is marked by thousands of miles of fences and fencerows. Some new, most old, fences are a symbol of ownership and productivity for the rural property owners. As for the urban community, fences may be a symbol of scenery or privacy in their own backyard.

Whatever their use, fences are still regulated in the state under "fence laws". Tennessee's current fence laws were originally placed into law in 1858 with minor changes made in the early 1930s and late 1970s. As with most laws written during that era, fence laws were designed for livestock and row crop farmers who composed over eighty-five percent of the population.

As a property owner or animal lover, your use of a fence carries with it a responsibility to adhere to statutes commonly known in what was once a mostly agrarian society.

The Tennessee Farm Bureau Federation has prepared this guide to understanding Tennessee's current fence laws. The answers are based on our interpretation of the statutes set forth in the Tennessee Code Annotated and our research. We hope this question and answer guide will better educate you as a property owner or animal owner on the responsibilities for erecting and maintaining a proper fence.

## Legal Fence

**Q:** What materials are considered lawful for sufficient fencing?

**A:** The law specifically lists stone, plank, rail,

earthen banks, wire, and osage orange and synthetic materials commonly sold for fencing.

**Q:** How should a lawful fence be built for cattle, horses, or mules?

**A:** A lawful fence would be built by stretching not less than five strands of barbed wire tightly between posts set in the ground not more than twenty feet apart. The topmost wire cannot be less than four and one-half feet from the ground. The bottom wire must not be less than six inches from the ground and the next bottom wire not less than fifteen inches from the ground.

## Livestock Confinement

**Q:** Does Tennessee law require that livestock be confined?

**A:** Livestock is not allowed to run-at-large in Tennessee. Owners who willfully allow this to happen could be charged with a class C misdemeanor. Any person who suffers damage from livestock running-at-large could have a lien placed on the animals until the damages are recovered. Fences enclosing livestock should be made of sufficient material according to the law.

**Q:** What if my livestock frequently escapes and trespasses onto another person's property?

**A:** Stock that habitually escapes is considered "notoriously mischievous" and must be confined to the owner's premises. The livestock owners would be strictly liable for damages caused by the animals if the animal is notoriously mischievous.

**Q:** Am I responsible for damages to someone else if my livestock trespass onto their property?

**A:** Tennessee is considered a "fence in" state. This means that a neighbor must fence in his property in order to keep escaped livestock out. When a neighbor's property is damaged by roaming livestock and the livestock does not habitually escape, the livestock owner is not liable for any damages if the neighbor does not have a fence or if the neighbor's fence is deemed insufficient. In the event that the neighbor's fence causes the livestock to be maimed, wounded or killed then the neighbor would be liable for paying damages to the livestock owner. If livestock escaped through a partition fence, the livestock owner would

be liable for damages only if the owner had refused to or neglected to maintain the partition fence and if the adjoining landowner had maintained their portion of the fence.

**Q:** As a row crop farmer, what standing do I have if livestock trespasses onto my property?

**A:** The law takes into consideration that livestock can escape from fenced property without any fault of the livestock owner. For this reason, cleared land for cultivation must be sufficiently fenced. Livestock owners are relieved of liability if their own property is sufficiently fenced and their livestock does not habitually escape. Tennessee courts have ruled that livestock owners are not liable to pay damages if the farmer did not show negligence and had sufficient fencing. In the event the neighbor's fence was sufficient also, the courts would decide on the amount of payable damages. A row crop farmer with sufficient fencing does have the right to complain to a general sessions judge in the case of livestock trespass. The judge may appoint two impartial citizens to examine the row crop owner's fence and make a decision whether that person's fence is sufficient and what damages he/she may recover. The decision would be considered evidence in the row crop farmer's demand for payment of damages. The livestock owner is entitled to a hearing before paying any damages.

## Partition Fences

(Property line fences)

**Q:** If I have a partition fence dividing my property from another, who maintains the fence?

**A:** Partition fences are the responsibility of both property owners even if one property owner has livestock and the other does not. Costs for building and maintaining a partition fence are supposed to be paid equally by each landowner.

**Q:** What if both landowners cannot agree on the cost of the fence?

**A:** A general sessions judge may appoint three impartial citizens to examine the fence and make a judgment as to the amount that should be paid by the landowners.

**Q:** What if one landowner refuses to maintain their portion of the fence?

**A:** That person would be liable for any damages that are a result of their neglect to maintain their portion of the fence.

**Q:** Can one landowner remove a partition fence?

**A:** Yes, but only by agreement or after that person has given the other landowner six-months written notice of his intent to remove the fence. Unless the other landowner consents earlier, the fence can only be removed after the six-months has passed.

**Q:** What if I live in a subdivision and do not want to be responsible for the fence separating my lot from farmland?

**A:** In cases where the partition fence separates agricultural and non-agricultural land, the non-agricultural landowner may disclaim any responsibility for the fence. The disclaimer must be in writing and sent to the other landowner by registered mail, with return receipt requested or by other means where written verification of receipt is obtained. By giving up responsibility for the fence, the non-agricultural landowner may not hold the agricultural landowner liable for any damages that may result from escaped livestock because of the condition of the fence.

## Common Enclosures

**Q:** What is a common enclosure?

**A:** Where two or more owners of adjoining property enclose their land under one common fence. For example, if two landowners bought property that had been one single farm with a common fence around the newly purchased tracts then each landowner could consider themselves under a common enclosure.

**Q:** Which landowner bears the responsibility of maintaining the fence?

**A:** Unless there is a written agreement by both landowners that details a different agreement, each landowner is responsible for the portion of the fence that is located on their property within the common enclosure.

**Q:** Can landowners within a common enclosure create a binding agreement to regulate livestock damage?

**A:** Landowners can form their own agreements