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Resolving Division Fence Disputes in Nebraska

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CORNHUSKER ECONOMICS

University of Nebraska–Lincoln Extension

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Institute of Agriculture & Natural Resources
Department of Agricultural Economics
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Resolving Division Fence Disputes in Nebraska

Market Report	Yr Ago	4 Wks Ago	4/1/11
Livestock and Products, Weekly Average			
Nebraska Slaughter Steers, 35-65% Choice, Live Weight	$97.12	$112.78	$124.55
Nebraska Feeder Steers, Med. & Large Frame, 550-600 lb.	131.01	151.00	160.08
Nebraska Feeder Steers, Med. & Large Frame 750-800 lb.	110.61	128.00	138.37
Choice Boxed Beef, 600-750 lb. Carcass	163.47	172.67	188.06
Western Corn Belt Base Hog Price Carcass, Negotiated	73.52	81.68	88.22
Feeder Pigs, National Direct 50 lbs, FOB	*	*	*
Pork Carcass Cutout, 185 lb. Carcass, 51-52% Lean	73.87	91.19	94.35
Slaughter Lambs, Ch. & Pr., Heavy, Wooled, South Dakota, Direct	*	184.50	202.75
National Carcass Lamb Cutout, FOB	283.15	370.64	397.50
Crops, Daily Spot Prices			
Wheat, No. 1, H.W. Imperial, bu.	3.62	7.44	7.60
Corn, No. 2, Yellow Omaha, bu.	3.35	6.84	7.12
Soybeans, No. 1, Yellow Omaha, bu.	9.21	13.62	13.69
Grain Sorghum, No. 2, Yellow Dorchester, cwt.	5.29	11.46	11.80
Oats, No. 2, Heavy Minneapolis, MN , bu.	2.08	3.83	3.75
Feed			
Alfalfa, Large Square Bales, Good to Premium, RFV 160-185 Northeast Nebraska, ton.	135.00	140.00	140.00
Alfalfa, Large Rounds, Good Platte Valley, ton.	87.50	72.50	72.50
Grass Hay, Large Rounds, Premium Nebraska, ton.	*	*	*
Dried Distillers Grains, 10% Moisture, Nebraska Average.	98.00	201.00	213.50
Wet Distillers Grains, 65-70% Moisture, Nebraska Average.	35.00	76.00	75.50

*No Market

Ideally, neighbors can agree between themselves on most fencing issues. If they do not, Nebraska Division Fence Statutes provide a legal process for resolving fence disputes. A recent *Cornhusker Economics Newsletter* (June 2, 2010), discussed the 2010 requirement that splits the cost of a wire division fence 50-50 between neighbors, and also the history of the Nebraska Division Fence Statutes. This newsletter discusses the process for resolving fencing disagreements in Nebraska.

Are division fences required? No, if neither neighbor wants the fence, there doesn't need to be one. However, if one neighbor wants the fence and the other neighbor doesn't, the fence builder can require the neighbor to pay half the cost of the fence even if the neighbor doesn't want the fence, doesn't have cattle or doesn't want to pay for the fence. NRS §34-102.

Who has to pay for a division fence between two landowners? Both landowners share the cost of the fence 50-50, unless they have previously agreed to a different split. The 50-50 rule applies even if only one neighbor has cattle. NRS §34-102(1).

What type of fence can be built? If the fence builder is going to pay for the fence, the statute does not restrict the type of fence built. But if the fence builder wants the neighbor to be responsible for half the fence, the fence must be at least four wires, at least number nine fencing wire and attached to posts no more than one rod (16.5 feet) apart, with a post or stake between every two posts. Barbed wire may be used, but is not required. The fence must be at least 4.5 feet high, with no more than one foot between the wires, measured from the top. If the neighbors both agree, a different type of fence may be constructed. NRS §§34-102(2), -115(5), -116.

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What if the neighbor doesn't want to pay his/her share? Under the statute, you must formally serve **written notice** upon the neighbor that you are going to build, maintain or repair the fence. You should obtain legal assistance here. If the neighboring landowner does not live on the land, you must serve the notice to whoever lives there or the owner's agent (probably a tenant). The written notice must request that the neighbor either build, maintain or repair his/her portion of the fence, or else pay you for doing so. After the written notice has been served, you may begin fence construction, maintenance or repair (unless you have requested that the neighbor do so instead of you). Alternatively, you can file a lawsuit to force the neighbor to comply, as discussed below. NRS §34-112.02(1)(2).

Do I need permission to go onto the neighbor's land for fence construction, maintenance or repair? No - the statutes give you the right to enter your neighbor's property, but only to the extent reasonably necessary to build, maintain or repair the fence. However, you cannot remove trees, buildings, personal property or other obstacles without either (1) the neighbor's permission, or (2) a court order. NRS §34-112.01

What happens if the neighbor won't pay, won't build or won't repair the fence? If you have properly served the written notice and the neighbor has not made arrangements to take care of their portion of the fence, you may sue them. Again, you will need legal assistance here. If a lawsuit is filed, the neighbors may agree to **mediate** the dispute as an alternative to a lawsuit. If you don't mediate, the case proceeds as a normal civil lawsuit. NRS §112.02(3)(4)(5).

What is my share of the fence? The fencing statutes don't address this, other than each neighbor is responsible for half the fence. The common approach for dividing the responsibility for fence construction and maintenance in Nebraska is the "right hand rule": each landowner would face the other in the middle of the fence and would be responsible for the half of the fence to their right. If a case went to court, there is no telling how the court would divide the fencing responsibilities between the plaintiff and the defendant.

What about keeping trees and shrubs off the fence? Each landowner is responsible for removal or trimming of trees or shrubs within or encroaching upon the fence line. Failure to do so is a private nuisance. LB108 (2011).

Commentary. The likely result of the current division fence statutes is that once landowners realize they must pay 50 percent of a new division fence, most will either pay their share or else build their half of the fence, as per the "right hand rule" approach for fence maintenance. If a neighbor is not maintaining his/her half of the fence, the other landowner can formally notify the neighbor of the need for repair. If the neighbor does not agree, then off to court they go. Most attorneys should be able to persuade their clients to resolve the dispute without going to trial, but one never knows. A possible reason to pursue a lawsuit might be to gain some concessions from the fence builder in maintaining existing trees or shrubs, or other fence construction issues that you couldn't negotiate in mediation.

References:

Nebraska Revised Statutes §§34-101 to -117 (2010); LB108 (2011). Nebraska fence mediation information: http://www.supremecourt.ne.gov/forms/fencedispute.shtml?sub7

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