



South Dakota Fence Law

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Each year the South Dakota Cooperative Extension Service receives many questions about who is responsible for fixing fence between neighbors. South Dakota law addresses who is responsible and what type of fence should be constructed. The material in this publication is presented only as a guideline or reference; the authors of this publication are not providing legal services.

South Dakota codified law has specific sections and language that pertain to what constitutes a legal fence between neighbors. The following information is not intended to be an all-inclusive list of all provisions of South Dakota law governing fences, but is provided as reference material only. This material was obtained from the South Dakota Legislative Research Council Web page at <http://legis.state.sd.us/statutes/index.aspx>. The information in this publication is believed to be current as of the date of publication. Readers are cautioned to check with an attorney regarding any changes to the legal code governing a legal fence between neighbors.

Not all aspects of fence law are covered in this publication. For example, South Dakota codified law specifies the responsibility for erecting a fence when an easement separating farms exists. Such aspects of the laws regarding farm fences are not addressed in this publication. **If legal advice relative to a problem is desired, the services of a competent attorney should be obtained.**

WHO IS RESPONSIBLE?

A number of questions regarding property fences are received each year and usually deal with the

primary question of who is responsible for building and maintaining the fence between neighbors. South Dakota law states that each landowner is liable for one-half the expense of building and maintaining a fence between adjoining properties. It might then be expected that there would be more fences across South Dakota and that these fences would be in good repair. The specific section of the South Dakota law that addresses both issues is SDCL section 43-23-1:

Unless adjoining landowners otherwise agree, every owner of land shall be liable for one-half of the expense of erecting and maintaining a partition fence between his own and adjoining lands. However, no owner of land is liable for such expense if neither keeps livestock on the affected tract of land and neither derives any other substantial benefit from the fence for a period of 5 years from the date of erection or repair of the fence.

South Dakota law is also specific about which half of the fence a landowner is responsible for. The specific section of South Dakota law is SDCL section 43-23-2:

Unless otherwise agreed upon, if adjoining landowners are liable for one-half of the expense of erecting and maintaining a partition fence pursuant to § 43-23-1, each owner of adjoining lands shall build that half of the fence which shall be upon his right hand when he stands upon his own land and faces the line upon which the proposed fence is to be built.

PENALTIES FOR FAILURE TO BUILD OR MAINTAIN FENCE

As everyone who has ever kept livestock knows, fences are very important. So when a fence is supposed to be in place, and isn't, livestock can roam where they are not supposed to go. South Dakota law addresses this important aspect by setting penalties for not building and maintaining fences between properties. Readers are again cautioned that this material is not a complete listing of all conditions of liability, and specific questions should be directed to a qualified attorney.

If a landowner has a neighbor who neglects their obligation to provide a proper fence, the landowner can make a written demand on their neighbor to build the fence. The specific section of South Dakota law where this provision is specified is SDCL section 43-23-5:

If any owner of any land who is liable for one-half of the expense of erecting and maintaining a partition fence pursuant to § 43-23-1 neglects or refuses to so erect and maintain one-half of a legal fence on the lines separating his land from adjoining land, the owner of the adjoining land may serve upon the delinquent owner a notice in writing demanding that the delinquent owner shall erect or repair, as the case may be, a legal fence along one-half of such line, describing it, within 30 days from the date of the service of the notice and demand upon him.

If the neighbor, after receiving the written notice and after the specified time period has passed, still does not provide the proper fence, the landowner can build the fence and then seek compensation from the neighbor. The reference is SDCL section 43-23-6:

If a delinquent owner neglects or refuses to erect or repair a partition fence within the time specified in § 43-23-5, the aggrieved owner may erect or repair the partition fence. The aggrieved owner may recover the cost of erecting or repairing the partition fence in a civil action and, in addition, recover an amount to be determined by the court as compensation for the time spent by the aggrieved owner.

The consequences of not building or maintaining a fence along adjoining properties can be consider-

able. A lien can be placed on the land of the individual who does not comply with the directive to build and/or maintain a fence between adjoining properties. This lien would also be regarded as superior to all other liens except taxes. The reference is SDCL section 43-23-8:

The judgment entered for construction or repair of a partition fence shall be a lien upon the land of the delinquent owner for which it was constructed, superior to all other liens thereon except taxes.

South Dakota law also specifies that damage to a fence or a gate is classified as a misdemeanor. An individual can also be classified as guilty of a Class 2 misdemeanor if they intentionally open, or leave open, a gate in the fence. Specific language is found in SDCL section 43-23-10:

Any person who shall intentionally open, or leave open, let down, throw down, tear down, or prostrate any fence, gate, or bars, legally constructed, located, and lawfully maintained, which encloses a meadow, pasture, livestock range, or private other inclosure, is guilty of a Class 2 misdemeanor.

LEGAL FENCE

Driving through South Dakota will quickly illustrate that not all fences are the same. Some fences may be new and substantial, while other fences are evidently in a state of disrepair. South Dakota law addresses this important aspect by specifying what constitutes a legal fence. Readers are cautioned that this material is not a complete listing of all conditions of liability, and specific questions should be directed to a qualified attorney.

South Dakota codified law specifies in detail what would be considered a legal fence. This description can be found in SDCL section 43-23-4:

Where such owners do not agree upon a different sort of fence, a legal partition fence shall consist of sound wood posts at least 6.5 feet long and 4 inches in diameter, and firmly set at least 2 feet in the earth and not over 30 feet apart, or concrete posts 6 feet or more in length, having a diameter of not less than 4 inches and having a reinforcing rod not less than one-fourth

inch in diameter throughout the full length thereof, firmly set and spaced as in the case of wood posts, or of steel posts not less than 5.5 feet in length, firmly set at least 17 inches in the earth and not over 20 feet apart, or a combination of steel and concrete or wood posts in a ratio of not more than 3 steel posts to 1 of wood or concrete as above specified, firmly set as aforesaid according to the type of post and not over 25 feet apart. Such posts shall be firmly braced at ends, corners, and gateways or openings, to prevent sagging, and upon them shall be firmly stretched and securely attached to each at least 4 strands of ordinary commercial barbed fencing wire, the lower strand to be 18 inches, the next 28 inches, the third 38 inches, and the fourth 48 inches from the earth. A deviation of not more than 2 inches in the wire spacing shall be considered to be in compliance with this section.

However, if the fence in question is being used to contain buffalo, the definition of a legal fence can be different. SDCL section 43-23-4.1 addresses fences for buffalo:

A legal fence for buffalo is the same as provided in § 43-23-4, except as provided in this section. A legal fence for buffalo may use smooth wire rather than barbed wire. All posts shall be of sufficient length to provide for 54 inches above the surface, and one additional strand of wire shall be included at 54 inches above the earth. The additional cost and maintenance of the legal fence for buffalo, other than as provided in § 43-23-4, shall be borne by the owner or caretaker of the buffalo if only one of the parties partitioned possesses the buffalo.

Occasionally, landowners may desire a different type of fence that may be more effective at containing certain types of livestock. SDCL section 43-24-6 states that a local option on the type of fence that

may be erected and considered a legal fence may be a woven-wire fence:

When such owners do not agree upon a different sort of fence, a legal partition fence shall consist of sound posts at least 6.5 feet long and 4 inches in diameter, or standard steel posts, and firmly set at least 2 feet in the earth and not over 20 feet apart. Such posts shall be firmly braced at ends, corners, and gateways or openings, to prevent sagging, and upon them shall be firmly stretched and securely attached to each a woven-wire fence 32 inches high, the bottom of which shall be firmly stretched even with the ground, which woven-wire fence shall be of 8 bars, with 6-inch stays, and wire to be not smaller than No. 10 or No. 13 wire; above such woven-wire fence shall be firmly stretched and securely attached to each post at least 2 strands of ordinary commercial barbed fencing wire, the lowest strand to be 4 inches from the top of such woven-wire fence and the upper strand to be 16 inches from the top of such woven-wire fence.

While South Dakota law is specific as to what constitutes a legal fence and how such a fence should be constructed and maintained, it remains evident that not all fences between landowners would meet these specifications. South Dakota law offers an explanation in section 43-23-3:

Any fence, upon which owners of such adjoining lands may agree, shall be a legal fence.

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