

# Do you Know Idaho Fence Law?



Adjoining landowners often have questions when one or both want to build a fence to delineate a boundary, create pasture, or fence out livestock. Some fundamental questions are raised: What is a fence? Who pays for construction? What if one party does not want to share costs or build the fence? Who takes care of the fence? Can the fence be taken down by one of the landowners, and what if the fence is not built on the property line?

Title 35 of Idaho Code addresses building and removing fences and the rights and responsibilities of landowners. The law specifically defines a fence, acceptable materials, and types of natural obstructions that can be considered a fence. It also goes into detail about the obligations of adjoining landowners.

Idaho Code 35-101 says, “a lawful fence, except as hereinafter provided, must not be less than 4 ½ feet high, and the bottom board, rail, pole or wire must not be more than twenty inches above the ground, and the space between the top and bottom board, rail, pole or wire must be well divided.”

Lawful fence described: IC 35-102 sets specific requirements for fence construction from various materials: stone, worm fence (rails), post and board fence with wire. Fences made whole or in part of brush, ditch, pickets, hedge, or other materials are also discussed. 35-102 also talks about the use of natural barriers, saying, “all fences in good repair, of suitable material and every description, and all creeks, brooks, rivers, sloughs, ponds, bluffs, hills or mountains that present a suitable obstruction to stock are deemed lawful fences.”

Partition fences: When a partition fence is necessary to divide adjoining property owned by different individuals, IC 35-103 says that after written notice by one party, parties have six months to complete the fence by sharing construction or costs. After that, the party giving the notice may build the entire partition fence and collect ½ the cost from the other party. Nonpayment of the cost can result in a lien on the nonpaying party’s partitioned land.



Care of fences by adjoining owners is discussed in IC 35- 104, which says landowners must agree or arrange to build and maintain the fence between the respective properties. One of the owners may choose to let his land be unenclosed if the other party improves the fence at his own expense. The unenclosed owner is not liable for the cost of improvements. If one owner reinforces the entire fence and uses the enclosed area for

pasture, the adjacent owner must pay for his portion of the fence if the adjacent owner pastures his animals in that area. Unless one owner agrees to be unenclosed, the half of the fence for which the owner is generally responsible is “. . . that half of the line fence between their respective tracts of land which is to his left when he is standing on his land facing the other, unless the owner of one of the said tracts choose to allow his land to be unenclosed. . . “

Division fences as an enclosure: IC 35-105 says that if an unenclosed landowner subsequently encloses his land with a fence and uses the partition fence as one side of the enclosure, the formerly unenclosed landowner is responsible for half the value of the other landowner’s partition fence used for the new enclosure.



IC 35-106 addresses disagreement between owners. If two adjoining landowners cannot agree to the proportion or part of a division fence to be made, maintained, or repaired by them, respectively, either party, after five days' notice, may file a complaint with the magistrate court using the procedure described in this section. The section also discusses respective financial responsibility if a fence is not built and subsequently constructed.

IC 35-107: Prohibition against removal if one landowner decides to open his enclosure; he cannot take away the fence belonging to him and the adjoining enclosure if the adjoining landowner agrees to pay for his part of the fence within two months. If they disagree on price, it must be determined using the process in IC-35-106. The fence can’t be removed if crops in the enclosure can be destroyed by opening the enclosure.

Removal of fence built by mistake: IC 35-10—If a fence is built in good faith on the adjoining landowner’s land, the builder or his successor can remove it within one year of discovering the mistake if no damage is done to the land.

Restrictions on an occupant’s right to remove: IC 35-109 The occupant or owner of the land upon which a fence has been mistakenly built cannot modify or disturb the fence during the period during which the person who built it is authorized by section 35-108 to remove it, or when by modifying or removing the fence the landowner would expose any crop to destruction.

Survey of line: IC 35-110 says a surveyor may be hired when the fence's location is questioned. When the line is established, the party who contracted the fence in error is required to remove the fence within one year.

Removal of partition fences is addressed in IC 35- 111. The law says that if one party wishes to remove a partition fence of any kind to either vacate the enclosure or make a lane of passage between the adjoining enclosures, the adjoining landowner must receive six months' advance written notice.

Gates: IC 35-112 says a gate in a partition fence may be used by any authorized user. If a person using the gate leaves it open or does other damage to the property, that individual is liable for double damages.

Open gates or destroying fences is a misdemeanor or trespass under IC 18-7012. It is unlawful for any person” to open or leave open any gate not belonging to that person. . . or to cut, break, tear down . . . any fence or wall or any obstruction used for a fence. . . “



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This article is an educational tool and should not be considered legal advice.

The article provides an overview of general Idaho fence law and does not include judicial decisions that might have affected specific portions of Idaho Code. After reviewing this pamphlet, any landowner with specific fence questions should consult an attorney.



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