CORNHUSKER ECONOMICS

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Resolving Division Fence Disputes in Nebraska

Market Report	Yr Ago	4 Wks Ag	7/20/12
Livestock and Products, Weekly Average			
Nebraska Slaughter Steers, 35-65% Choice, Live Weight	$108.38	$115.67	$112.48
Nebraska Feeder Steers, Med. & Large Frame, 550-600 lb.	148.00	167.54	150.95
Nebraska Feeder Steers, Med. & Large Frame 750-800 lb.	135.00	*	140.13
Choice Boxed Beef, 600-750 lb. Carcass	178.50	197.45	182.07
Western Corn Belt Base Hog Price Carcass, Negotiated	98.93	101.68	94.49
Pork Carcass Cutout, 185 lb. Carcass, 51-52% Lean	99.55	97.61	90.33
Slaughter Lambs, Ch. & Pr., Heavy, Wooled, South Dakota, Direct	192.00	137.50	108.50
National Carcass Lamb Cutout, FOB	408.30	342.71	327.33
Crops, Daily Spot Prices			
Wheat, No. 1, H.W. Imperial, bu.	6.95	6.36	8.59
Corn, No. 2, Yellow Nebraska City, bu.	7.28	6.25	8.25
Soybeans, No. 1, Yellow Nebraska City, bu.	13.80	14.14	17.33
Grain Sorghum, No. 2, Yellow Dorchester, cwt.	11.79	9.84	13.66
Oats, No. 2, Heavy Minneapolis, MN , bu.	3.71	3.52	4.12
Feed			
Alfalfa, Large Square Bales, Good to Premium, RFV 160-185 Northeast Nebraska, ton.	180.00	207.50	242.50
Alfalfa, Large Rounds, Good Platte Valley, ton.	135.00	140.00	190.00
Grass Hay, Large Rounds, Good Nebraska, ton.	72.50	97.50	152.50
Dried Distillers Grains, 10% Moisture, Nebraska Average.	195.00	225.00	333.00
Wet Distillers Grains, 65-70% Moisture, Nebraska Average.	74.00	81.50	110.00

*No Market

The need for personal legal advice: Fence law and other property issues require a consideration of law and facts unique to each case. This extension publication is intended for educational purposes only; it must not be used as a substitute for private legal counsel. Any person doing so may jeopardize his or her legal rights.

Ideally, neighbors can agree between themselves on most fencing issues. If they cannot agree, Nebraska Division Fence Statutes provide a legal process for resolving fence disputes. A 2010 amendment establishes the requirements for splitting cost of a wire division fence equally (50-50) between neighbors. Mediation is probably the most cost-effective way to resolve fence disputes if the parties cannot settle the matter between themselves.

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 neighbor desiring the fence can require the neighbor to pay half the fence cost even if the other neighbor doesn't want the fence, doesn't have livestock 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 agreed to a different split*. The 50-50 rule applies even if the neighbor not wanting the fence does not have livestock. 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, attached to posts no more than one rod (16.5 feet) apart,

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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.

What if the neighbor doesn't want to pay his/her share? Under the statute, you must formally serve written notice upon the neighbor if you are going to build, maintain or repair the fence. You should obtain legal assistance here – if you don't meet the notice legal requirements, you could lose your right to compensation. 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 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. You would need legal assistance in obtaining a court order to remove trees, buildings, etc., from the neighbor's land.

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 34-112.02(3)-(5). If you fail to follow the written notice requirement, you may lose your right to compensation. So obtaining legal assistance is important.

What happens if the fence is damaged by natural disaster? If a fence is injured or destroyed by fire, flood or other casualty, each neighbor rebuilds or repairs their portion of the fence on the same basis as they are responsible for fence construction (50-50 in most cases). NRS 34-112.

What is my share of the fence maintenance? Each neighbor is responsible for keeping his or her share of the fence in good repair, on the same basis as they are responsible for fence construction (50-50 in most cases). NRS 34-102. 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. NRS 34-103.

How does mediation work? Fence disputes are precisely the type of issues that may best be addressed through mediation. Mediation is basically voluntary negotiations between the parties (without attorneys), under the supervision of the mediator. The mediator attempts to help the parties reach a voluntary compromise to resolve their dispute. About 85 percent of mediated disputes are resolved successfully. It is quicker, less expensive and more flexible than a private lawsuit. For more information, contact 800-464-0258 (Nebraska Farm Mediation Services) or 402-471-3149 (Nebraska Office of Dispute Resolution).

Commentary. The likely result of the current division fence statutes is that once they realize they must pay 50 percent of a new division fence, most landowners will pay either their share or else build their half of the fence, following the right hand rule. Hopefully, most landowners will also agree to 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, you have the option to repair the fence and then recover your expenses through mediation or litigation.

References

Nebraska Revised Statutes sections 34-101 to -117 (2011).

Nebraska fence mediation information:
http://www.supremecourt.ne.gov/forms/fencedispute.shtml?sub7

Nebraska Farm Mediation Services:
http://www.agr.ne.gov/mediation/index.html

Nebraska Office of Dispute Resolution:
http://www.supremecourt.ne.gov/mediation/index.shtml?sub7

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