

Second Edition

FIVE STRANDS:

A Landowner's Guide
to Fence Law in Texas

TEXAS A&M
AGRILIFE
EXTENSION



James D. Bradbury PLLC



Fort Worth • Austin

Tiffany D. Lashmet

Associate Professor
and Extension Specialist

James D. Bradbury

Partner, James D. Bradbury, PLLC
Austin–Fort Worth

Kyle K. Weldon

Associate Attorney, James D. Bradbury, PLLC
Austin–Fort Worth

Sarah Patterson

Student, Texas Tech University School of Law,
National Agricultural Law Center Research Fellow



Preface

The initial version of this book arose out of a late-afternoon call from a rural county in Texas. Two landowners could not agree on a fencing question and called the county for help. The county judge called us, and after a few minutes of discussion regarding the question, we realized that Texas landowners need a field guide for fencing questions. We work with Texas landowners, and we get more questions about fencing than any other topic. And, while there are thousands of miles of barbed wire across the state, we lack an easy-to-use resource to answer the everyday questions that arise between landowners. Another lengthy law book would not fit in the glove box of a pickup, so we kept this short and easy-to-follow. It may not answer every question, but it should cover most. And, remember, the law will never substitute for an understanding between two neighbors over a cup of coffee.

This second edition includes updates and new material that arose out of wild fence law questions we receive regularly. The first edition was printed and used by tens of thousands of landowners, sheriffs, county officials, and real estate professionals. Lastly, many groups who printed this book made donations to Texas 4-H and FFA foundations to support youth in agriculture.

—The Authors



Table of Contents

Preface	iii
Introduction	1
Liability for Livestock on the Roadway	3
Open Range vs. Closed Range	3
Local Stock Laws	3
U.S. and State Highways	6
Road/Highway Liability Examples	7
Cattle on Certain County Roads	9
Landowners and Emergency Responders	9
Liability for Livestock on Neighboring Land	10
My neighbor's cattle are on my land. How do I remove them?	10
Stray livestock are on my land. How do I remove them? (Estray laws)	13
Responsibility for Building and Maintaining Fences	15
Perimeter Fence between a Landowner and a State Highway	16
Building and Maintaining a Boundary Fence Between Neighbors	15
Clearing Brush to Build a Fence on a Boundary Line	16
Removal of Adjoining Fences Statute	17
Trimming a Tree Hanging over a Property Line	17
Adverse Possession	17
Responsibility for Fencing Around Oil and Gas Operations	19
Conclusion	20
Appendix	21
Landowner Maintenance Checklist	21
Stock Law Examples.....	21
Notes	24
Acknowledgments	25
Photo Credits	25



Introduction

The old saying “good fences make good neighbors” still applies today. But in our view, good neighbors make the best fences. Texas has thousands of miles of fences. With the vast majority of these fences located along boundary lines and roadways, disputes do arise. Unfortunately, there are many misconceptions and dead guesses about fence laws. Who is liable when vehicles on a roadway hit livestock? What are a landowner’s rights if another person’s livestock are on his or her property? Who is responsible when it comes to building and maintaining fences? This book gives landowners and livestock owners a background on how Texas fence laws originated, explains the current laws they should know, and details a few common fence dispute scenarios and solutions.



Liability for Livestock on the Roadway

To understand Texas' current approach to fence law as it relates to liability in the event of an accident, one must first understand the concepts of open range versus closed range.

Open Range vs. Closed Range

Texas is an open range state, tracing its roots back to the trail drives and cattle barons of the 1800s. Open range means exactly that—livestock owners are not required to fence in their livestock to prevent them from roaming at large. The Texas Supreme Court supported the open range policy more than a century ago when it stated, "if the cattle of one person wander upon the [unenclosed] lands of another...they are not trespassers, and the owner is not liable for any damage that they may inflict."¹ The Texas Supreme Court reaffirmed this more recently, stating that "[i]t is the right of every owner of domestic animals in this state...to allow them to run at large."² While the common law of open range is still in effect, there are two exceptions that have changed large portions of the state from open range to closed range: (1) the passage of local county ordinances (stock laws), and (2) the development of U.S. and state highways and a state statute deeming property adjacent to these roadways closed range.

Local Stock Laws

As Texas developed, laws changed and counties enacted restrictions on open range. Such closed range laws make livestock owners responsible for fencing in their livestock on their property. The Texas Legislature allows local governments to pass stock laws that modify the law for that location from the common law rule of open range to closed range.³ These stock laws are created by election where local voters consider a proposed stock law, which can apply to all or a portion of a county. Every stock law specifies that certain species of animals (such as cattle, horses, jacks, jennies, and sheep) may not run at large within the limits of the specific county or area. The stock law replaces the common law rule of open range, making the applicable portion of the county closed range. Livestock owners in counties that have a stock law (now a closed range area) have a duty to prevent

their livestock from running at large, usually by maintaining a fence to keep their livestock on their property. Failure to do so may result in civil penalties, and, in certain instances, may also constitute a Class C misdemeanor.⁴

Because each local stock law is unique, the following questions are crucial when evaluating the law in a particular county:

- Does a stock law exist in the county?
- Which animal species does the law cover?
- Did the animal owner meet the required standard outlined in the local stock law?

Does a stock law exist in my county?

Unfortunately, there is not currently an accurate consolidated list of which Texas counties are still considered open range or closed range. Since many of these stock law elections occurred between 1910 and 1930, it may take extensive research to determine the status of one's county. The best option is to contact the county sheriff's office, county attorney, county Extension agent, or ask the county clerk to search the election records to determine if a local stock-option election has been held to make the county "closed range." For examples of stock laws, see pages 22 and 23 in the Appendix.

Once a person determines whether a stock law exists in a particular county, it is then critical to determine whether the law applies to the entire county, or only to particular areas within the county. For example, some laws are limited to certain precincts within a given county.

For reasons that are left to mystery, in 1981, the Texas Legislature exempted some counties from holding a county-wide election to adopt a local stock law regarding running cattle at large. These counties include Andrews, Coke, Culberson, Hardin, Hemphill, Hudspeth, Jasper, Jefferson, Kenedy, Kinney, La Salle, Loving, Motley, Newton, Presidio, Roberts, Schleicher, Terry, Tyler, Upton, Wharton, and Yoakum.⁵ Though no court has interpreted this statute, the language suggests that although these counties may not pass a county-wide stock law for cattle, individual precincts within the counties may be able to do so.

Which animal species does the law cover?

If a stock law exists, the next step is to determine which livestock species it covers. The Texas Agriculture Code allows stock laws to

regulate cattle, domestic turkeys, donkeys, goats, hogs, horses, jacks, jennets, mules, or sheep.⁶ Based on the particular stock law, it is possible that the same area may be closed range for horses and donkeys, but open range for cattle, for example. The statute also requires separate stock laws for each livestock species (one for cattle, one for horses, and one for other animals). In fact, in an opinion issued by the Texas Attorney General, stock laws that are not separated by species may be regarded as ineffective.⁷ This result may depend on the date on which the stock law was passed.⁸

Have I met the standard outlined in the local stock law?

In a county with a stock law, a livestock owner may not permit his or her animals to run at large. If a third party is injured, a livestock owner is liable only if he or she permitted the livestock to run free. Texas courts have interpreted "permit" to mean to expressly or "formally consent" or to "give leave," and that merely making it possible for an animal to run at large is insufficient to impose liability on a livestock owner. Permit does not refer to the "temporary escape" of animals. Rather, "it refers to animals allowed as a matter of course to graze and move about freely in an unconfined area."⁹ In determining an owner's liability for livestock roaming at large, courts look to the owner's actions because an animal in the roadway does not automatically constitute a violation of a stock law.



Some examples of livestock owner actions that might result in liability include:

- leaving a gate open,
- authorizing a lessee to allow cattle to run at large,
- having notice that the livestock were out in the roadway and failing to remove the livestock,
- having knowledge that livestock previously escaped from the property, or
- failing to maintain the fences surrounding the pasture.

U.S. and State Highways

Land along U.S. and state highways in Texas is always considered closed range. State law requires landowners with property adjacent to U.S. and state highways to prevent their livestock from running at large on the highway. The Texas Supreme Court affirmed this approach, applying the “knowingly permit” standard in a 2020 case where a bull was hit on a state highway.¹⁰ The Texas Agriculture Code states that “[a] person who owns or has responsibility for the control of a horse, mule, donkey, cow, bull, steer, hog, sheep, or goat may not knowingly permit the animal to traverse or roam at large, unattended, on the right-of-way of a highway.”¹¹ In addition to potential civil penalties, a person who knowingly permits an animal to run at large also commits a Class C misdemeanor, with each day an animal is permitted to run at large constituting a separate offense.¹²



To determine the scope of this statute, it is necessary to define:

- what constitutes a highway, and
- what “knowingly permit” means.

What constitutes a highway?

For purposes of this statute, a “highway” is defined as all U.S. and state highways but does not include a numbered farm-to-market or ranch road.¹³ Thus, all state and U.S. highways are closed range under Texas law, but farm-to-market or ranch roads are open range unless a local stock law modifies the area in which the farm-to-market road or ranch road is located.¹⁴

What does “knowingly permit” mean?

For U.S. and state highways, a livestock owner may not “knowingly permit” his or her animals to run at large. This standard is higher (more favorable to the livestock owner) than the “permit” standard found under the stock law statute. Texas courts have defined “knowingly permit” as an awareness or understanding, acting deliberately or consciously, and most recently as acting “with knowledge that his conduct is reasonably certain to cause the result.”¹⁵

In analyzing whether a person “knowingly permitted” livestock to run at large, courts undertake a very fact-specific analysis. For example, a court ruled a livestock owner acted knowingly when:

- he was aware that the fences were unable to withstand rainfalls;
- he knew cattle had escaped through the weak fences during rainstorms many times before the accident;
- the police had previously informed him his cattle were on the roadway, and
- he did not inspect the fences before the accident occurred.¹⁶

Conversely, a livestock owner who keeps his gate locked and chained and has no prior knowledge of his cattle escaping on a roadway was not deemed to have acted “knowingly.”¹⁷

Road/Highway Liability Examples

The law regarding closed and open range comes into play most often when a vehicle strikes livestock on a roadway. In the event of an accident, local stock laws and the statute regarding U.S. and state

highways determine whether a livestock owner may be liable to an injured motorist.

The following examples include various scenarios of accidents with livestock on a roadway and the basic rules for determining potential livestock owner liability:

- **An accident occurs in an open range county on a U.S. or state highway.** *The livestock owner may be liable if the owner knowingly permitted the livestock to get on the roadway.*
- **An accident occurs in a county that has adopted a stock law on a U.S. or state highway.** *The livestock owner may be liable if the party knowingly permitted the cattle to get on the roadway.*
- **An accident occurs in an open range county on a farm-to-market road or smaller roadway.** *The livestock owner has no duty to prevent livestock from entering the roadway by their natural behavior. Thus, the owner would not be liable.*
- **An accident occurs in a county that has adopted a stock law on a farm-to-market road or smaller roadway.** *The livestock owner may be liable if the party permitted the cattle to get on the highway.*

The “Double Closed Range” Situation

In 2020, an interesting question came before the Texas Supreme Court—where an accident occurs on a state or U.S. highway (imposing a “knowingly permit” standard) in a county with a stock law (imposing a “permit” standard), which standard applies?

In *Pruski v. Garcia*,¹⁸ the Texas Supreme Court faced this very question after a bull was hit on State Highway 123 in Wilson County and the motorist sued the owner of the bull. Wilson County passed a stock law in 2010, prohibiting cattle owners from “permitting” cattle to run at large. The bull owner argued that in order for him to have any liability to the motorist, the motorist had to prove the owner “knowingly permitted” the bull to run at large per the state and U.S. highways statute (a higher or more difficult standard to prove). Conversely, the injured driver argued that because the collision occurred in a county with a stock law, he only needed to prove the bull owner “permitted” the animal to run at large (a lower or easier standard to prove).

The Texas Supreme Court sided with the bull owner, holding that in a situation where both the state and U.S. highways statute and a local stock law are in place, it is the higher “knowingly permit” standard from the state and U.S. highways statute that will apply. This was a favorable ruling for livestock owners across the state.

Cattle on Certain County Roads

There is one additional statutory provision of which livestock owners should be aware involving cattle on certain county roads. The Texas Agriculture Code Section 143.003 states, "cattle on a county road are not considered to be running at large" if the county road meets these two elements: (1) the road separates two tracts of land under common ownership or lease; and (2) the road contains a cattle guard constructed as authorized under the Texas Transportation Code Section 251.009 that serves as part of the fencing of the two tracts.

Thus, if a county has a stock law prohibiting owners from permitting cattle to run at large, provided these two factors are met, cattle would not be considered as "running at large" if they were on the county road at issue.

Landowners and Emergency Responders

Landowners are not liable "for damages arising from an incident or accident caused by livestock of the landowner due to an act or omission of a firefighter or a peace officer who has entered the landowner's property with or without the permission of the landowner, regardless of whether the damage occurs on the landowner's property."¹⁹ For example, if emergency responders must cut a portion of fence alongside a highway to put out a fire, the landowner will not be liable if any livestock escape onto the highway.



Liability for Livestock on Neighboring Land

In addition to disputes between livestock owners and motorists regarding livestock and fences, questions often arise between neighboring landowners regarding the obligations they owe one another concerning fences and livestock.

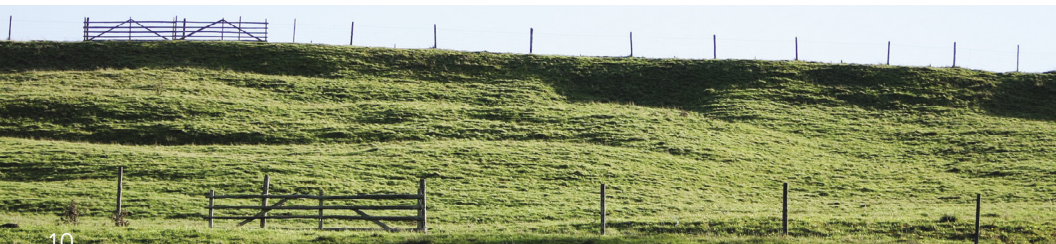
My neighbor's cattle are on my land. How do I remove them?

Once again, the answer depends on whether this situation occurs in an open range county or in one that has passed a stock law making it a closed range.

Open Range

In an open range county, if a landowner wants to preclude grazing animals from entering his or her property, the landowner is responsible for building a sufficient fence. (What constitutes a sufficient fence will be outlined below.) According to the Texas Supreme Court, "[i]t follows that one who desires to secure his lands against the encroachments of livestock running at large, either upon the open range or in an adjoining field or pasture, must throw around it an [enclosure] sufficient to prevent the entry of all ordinary animals of the class intended to be excluded. If he does not, the owner of animals that may encroach upon it will not be held liable for any damage that may result from such encroachment."²⁰ Thus, generally speaking, if a landowner fails to build a sufficient fence in an open range area, he or she has no recourse against a livestock owner when animals enter his or her property.

However, there are limited exceptions to this general rule. First, a neighboring landowner may be allowed to recover damages for trespass when a livestock owner intentionally drives the livestock



onto the neighbor's property.²¹ Second, if a livestock owner knows his or her livestock are breachy, diseased, or vicious, the livestock owner has the obligation to prevent the animals from running at large even in an open range area.²² Third, if a landowner in an open range county builds a sufficient fence as defined by statute, and the livestock of another still get on his or her property, the landowner may be able to recover crop or property damages from the animal's owner.

What is a sufficient fence under the Texas Agricultural Code?

The Texas Agriculture Code establishes the requirements for a "sufficient fence." However, these fencing standards apply only in open range counties where fences are meant to keep livestock "out" rather than "in."²³ These sufficient fence standards do not apply in a closed range county, nor can they be used to determine negligence or liability in a roadway accident situation.

In an open range county, it is the landowner's duty to build fences that keep animals of another off the landowner's property. The sufficient fence standard in the Agriculture Code determines if a landowner who built a fence to keep livestock off his or her property can recover property or crop damage from an animal's owner if the animal got onto the landowner's property.

Section 143.028 provides the following guidelines:

(a) A person is not required to fence against animals that are not permitted to run at large. Except as otherwise provided by this section, a fence is sufficient for purposes of this chapter if it is sufficient to keep out ordinary livestock permitted to run at large.

(b) In order to be sufficient, a fence must be at least four feet high and comply with the following requirements:

- 1. A barbed wire fence must consist of three wires on posts no more than 30 feet apart, with one or more stays between every two posts;*
- 2. A picket fence must consist of pickets that are not more than six inches apart;*
- 3. A board fence must consist of three boards not less than five inches wide and one inch thick; and*
- 4. A rail fence must consist of four rails.²⁴*

Thus, for landowners in an open range county, meeting these sufficient fence requirements may allow recovery for trespassing animals.

Closed Range

In a county that has passed a stock law (making it a closed range), livestock owners must restrain their livestock by fencing them “in” their property. Allowing livestock (that are covered by the stock law) to run at large in a closed range county is a violation of the stock law. Nevertheless, the grass does tend to be greener on the other side and livestock may get out on occasion. Understanding this, the Texas Supreme Court explained, “animals may often escape without fault on the part of their owners, when the latter will be guilty of no offense against the law...the mere fact that an animal is at large is not necessarily a violation.”²⁵

In a closed range county, a landowner may be able to recover damages from a livestock owner whose animals come onto the landowner’s property if the livestock owner failed to meet the requirements of the closed range county—not to “permit” animals to run at large. Thus, if a livestock owner did permit his or her animals to run at large, he or she may be liable. However, if the livestock owner did not so “permit,” and the livestock still got out, there may be no recovery under the law.

In most cases, the livestock that have escaped and entered another’s land are there by accident. Notifying the livestock’s owner and helping the owner retrieve the livestock off one’s property is the best course of action.

Lessee Liability

Many Texas livestock producers lease the land they run their livestock on. This presents a question of who is responsible for fencing the land the livestock run on—the landowner or the lessee? Absent an agreement allocating responsibility between the landowner and the lessee, these laws could apply to both the landowner and the lessee who runs the livestock on a ranch. Because of the potential liability a landowner may face even if they don’t own the livestock, it is highly recommended that those leasing their property get a lease agreement in writing that (1) allocates the responsibility for inspecting and maintaining fences, (2) includes indemnification of the landowner, and (3) requires the lessee to carry insurance in a certain amount. For more information on grazing lease agreements, Texas A&M AgriLife Extension has a *Ranchers’ Agricultural Leasing Handbook* available at AgriLife Learn and an *Online Ranchers Leasing Workshop* course option available as well.

Stray livestock are on my land. How do I remove them? (Estray laws)

If the livestock on one's property belong to an unknown owner or the owner is uncooperative or difficult, there is a statutory procedure for dealing with stray livestock.

Under Chapter 142 of the Texas Agriculture Code, a landowner who finds stray or "estrays" livestock on his or her property should "as soon as reasonably possible, report the presence of the estray to the sheriff of the county in which the estray is discovered."²⁶ Providing the location, number, and a description of the stray livestock helps the sheriff's office find the true owner and remove the livestock. Once stray livestock are reported, the sheriff will attempt to contact the owner. If the owner is found, he or she may recover the livestock in accordance with the procedures set forth by statute. If an owner is not found or fails to redeem the livestock within 5 days, the sheriff will impound the animal. If the animal is not recovered from impound, the sheriff will sell the animal at public auction.

Just because stray livestock are on one's land does not mean the landowner can automatically claim them or remove them by other methods. Disposing of estrays outside of the procedure in Chapter 142 may be considered livestock theft.



In addition to contacting the sheriff pursuant to the Texas Agriculture Code, another option may be to contact the Texas & Southwestern Cattle Raisers Special Ranger for the particular area, as they may be able to help handle estray issues as well.

One interesting question regarding the estray law recently came up. Does the estray law apply in open range counties? In other words, if the open range law allows livestock to roam at large, does the sheriff have an obligation under the estray law in an open range county? That very question arose in Presidio County. And in 2019, a Texas Attorney General Opinion held the estray law does, in fact, apply in every county in Texas, regardless of its open or closed range status.²⁷ So even in an open range county, the sheriff has the authority to gather up and impound lost or stray livestock.



Responsibility for Building and Maintaining Fences

As a starting point, having an accurate survey that shows the correct boundary line is paramount when building boundary fences. Without a survey showing where property lines end and begin, fence building is an inaccurate guess and could lead to future headaches.

Perimeter Fence between a Landowner and a State Highway

In Texas, all U.S. and state highways are closed range. The Texas Agriculture Code states, “[a] person who owns or has responsibility for the control of a horse, mule, donkey, cow, bull, steer, hog, sheep, or goat may not knowingly permit the animal to traverse or roam at large, unattended, on the right-of-way of a highway.”²⁸ To keep livestock off of interstates and state highways, it is the landowner’s responsibility to build/maintain a fence along an interstate or state highway. However, if a landowner does not intend to have any livestock on his or her property, there is no independent obligation to build a fence.

Building and Maintaining a Boundary Fence Between Neighbors

Frequently, questions arise regarding whether neighboring landowners must share in the costs of building and maintaining boundary fences. A landowner in Texas has no legal obligation to share in the costs or future maintenance of a fence built by his or her neighbor on the dividing property line, unless he or she has agreed to do so. If any such agreement is made, it should be done in writing in order to be enforceable. Even if a boundary fence is destroyed by natural causes, a neighbor still has no obligation to contribute toward its reconstruction.²⁹

The Texas Supreme Court has held, “if one proprietor [encloses] his land, putting his fence upon his line, the owner of the adjacent land may avail himself of the advantage thereby afforded him of [enclosing] his own land without incurring any liability to account for the use of his neighbor’s fence.”³⁰ However, if the neighboring landowner does not participate in the costs of erecting the fence,

it is not considered a commonly owned fence. Rather, it is the exclusive property of the builder.³¹ Similarly, if a fence is built not on the property line, but instead on one landowner's property, then the fence is also considered exclusive property of that landowner.

If the neighbors agree that each will maintain a portion of the fence, such agreement is legally binding and can be enforced.³² These agreements are rare but may be extremely useful for neighboring landowners to specify their rights and obligations regarding fences before an issue arises. Once neighbors reach a friendly agreement, it should be written down, a copy kept by each landowner, and recorded in the county deed records.

Clearing Brush to Build a Fence on a Boundary Line

Sometimes a landowner building a fence along a boundary line must clear brush on both his or her own property and the neighbor's property. If this is necessary, the landowner should always seek permission from the neighbor before entering his or her property and before clearing any brush. Without such permission, entering a neighbor's property and removing the brush could be considered trespassing and subject the acting landowner to damages. It is always better to ask for permission ahead of time. If permission is denied, the landowner may have to back the fence up on his or her property.



Removal of Adjoining Fences Statute

It is worth noting that the Texas Legislature passed a law in 1981 that governs the removal of adjoining fences, although there have been no reported cases applying or interpreting the statute to date.³³ Essentially, this statute provides three requirements.

First, absent mutual consent by the parties, a person may not unilaterally remove a separating or dividing fence in which the person is a joint owner.³⁴

Second, a person who owns an interest in a fence that is attached to a fence owned or controlled in whole or part by another person must give 6 months' written notice to the owner of the other fence prior to removing his or her attached fence.³⁵

Third, a person who owns a fence wholly on his or her own property may require the owner of an attached fence to disconnect and withdraw the attached fence by giving 6 months' written notice.³⁶

Trimming a Tree Hanging over a Property Line

Assume a tree grows on the neighbor's property, but the limbs and branches overhang another's land. What rights do the parties have in that situation? In Texas, the location of the trunk of the tree determines who owns it, even if the roots or branches grow onto an adjoining neighbor's land. A landowner has the right to trim or cut off the limbs or branches of boundary trees or shrubbery that reach onto his or her property, as long as no damage to the other adjoining landowner occurs. However, the limbs or branches can be cut back only to the property line. The tree's owner is responsible for any damages caused to the adjacent owner from falling branches or roots. It is in the best interest of the tree's owner to control the growth of the tree so it does not create a source of potential damage to the neighboring landowner.

Adverse Possession

Adverse possession, commonly referred to as squatters' rights, is a legal concept that concerns many Texas landowners. Essentially, if one person uses the property of another exclusively, openly, and notoriously for a certain amount of time (generally speaking, 10 years) without permission, the person using the land may be entitled

to claim ownership of the property through adverse possession. The risk of adverse possession encourages landowners to make regular use of and inspect their property. It is very difficult in Texas to take someone's land by adverse possession. Although rare, this situation may arise periodically in the context of fencing.

For example, assume a landowner's fence is just inside his property line and his neighbor grazes livestock on the few feet of land belonging to the landowner, but not included within the fenced-in area. While that land does not technically belong to the neighbor who is using it, if several factors are met, the neighboring landowner may actually be able to seek title to that property. In order for someone to lawfully gain possession of land by adverse possession, there must be

- a visible appropriation and possession of the property,
- that is open and notorious,
- peaceable,
- under a claim of right,
- adverse and hostile to the claim of the owner, and
- consistent and continuous for the duration of the statutory period.³⁷

Each of these elements requires in-depth legal analysis beyond the scope of this handbook to determine if they exist in a particular case.



One key element a neighbor using another's land would have to prove is the use was made "under a claim of right." The neighboring landowner would have to prove he or she "designedly enclosed" the property for his or her own use in order to adequately give notice to the record owner of the hostile claim.³⁸ Using a boundary fence line example, if Neighbor A builds his fence inside his property line, Neighbor B's cattle occasionally grazing on the land is not going to be enough to gain title. However, if Neighbor B builds his own fence just outside the current fence (and on the property of Neighbor A), that is more likely to be the sort of evidence that could be used to show Neighbor A had sufficient notice that Neighbor B was staking a hostile claim to that strip of land. Simply grazing livestock on the contested land is not enough to gain possession by adverse possession.³⁹

A good practice if a person builds a fence off of the property line is to enter into a boundary line agreement with the neighbor indicating the fence is not on the property line, both parties understand this, and there will be no claim of adverse possession due to this fact. This type of agreement should be in writing and filed in the deed records.

Responsibility for Fencing Around Oil and Gas Operations

The mineral estate is dominant to the surface estate, meaning a mineral owner or lessee has the implied right to use as much of the surface as is reasonably necessary to produce the minerals, without permission from or payment to the surface owner. In Texas, oil and gas companies have the right to enter private property and locate their production facilities under the "reasonable right to use the surface." Oil and gas companies are under no legal obligation to place a fence around their operations in order to protect a surface owner's livestock.

"In the absence of a lease provision to the contrary, the only duty owed by the operator of an oil lease to the owner or lessee of the surface, who is pasturing cattle, is not to injure such cattle intentionally, willfully, or wantonly. There is no duty on the part of an operator to put fences around his operations."⁴⁰ A 2022 decision from the Eastland Court of Appeals highlights this, finding no liability for an oil company when over 100 cows were killed after being exposed to oil and saltwater after getting through a hotwire fence into a tank battery area.⁴¹

If livestock are injured, a landowner may have legal claims if there is evidence that the oil and gas operator:

- acted in an intentional, willful, or wanton manner to injure the livestock;
- acted negligently in producing the minerals; or
- used more of the surface than was reasonably necessary.

However, because each of these claims will likely be difficult to prove, the landowner is much better off to include contractual provisions that require the operator to fence off operations to protect livestock (ideally in the oil and gas lease itself). In the absence of a lease provision, communication with the oil and gas operator is key and likely the best course. The operator may be willing to put up a fence around its facilities in order to avoid potential liability.

Conclusion

Texas fence law can be a confusing area of law where much misinformation exists. Taking the time to review this handbook will allow landowners and livestock owners to understand the basic concepts and responsibilities that exist related to fences. As we've stated previously, in most situations, there is no substitute for sitting down and working these issues out over a cup of coffee. Good luck, and keep the wires tight!



Appendix

Landowner Maintenance Checklist

- Inspect and repair fences regularly.
- Check livestock frequently to be sure none have escaped.
- Keep records of when inspections are conducted.
- Carry liability insurance.
- Get to know neighbors.
- In case of emergency, share contact information with neighbors and county officials (sheriff).
- Be aware of the Texas & Southwestern Cattle Raisers Special Ranger for the area.

Stock Law Examples

The following examples are local stock laws passed in Hunt County, Texas, in 1907. These laws were often handwritten and included in the minutes of commissioner's court meetings held nearly a century ago. Unfortunately, there is no published compilation or other way to quickly and efficiently look up Texas stock laws.

Vol H / 140

Stock Law Election Proclamation, for Hunt County, Texas.

Whereas on the 14th day of December A.D. 1907, an election was held in Hunt County, Texas, at the usual voting places, on the second Election Precincts in said County, to determine whether or not horses, mules, jacks, Jennetts and cattle should be permitted to run at large in Hunt County, Texas; And whereas at said election there were 1726 votes cast as follows:

For the Stock Law. -- 1516 votes
Against the Stock Law. -- 210 votes.

And it appearing that there was a majority just for the Stock Law of 1506 votes at said Election, and that said election was held in accordance with law and the returns thereof, having been opened by the undersigned, tabulated and certified in the presence of Wiley Green, County Clerk of Hunt County Texas, and of C. A. Ledy, County Attorney, and of J. H. Neal, all being respectable citizens of Hunt County Texas, with the result above stated.

Now therefore, I, J. M. Manning, County Judge in and for Hunt County, Texas, by virtue of the franchise, and pursuant to the authority vested in me by said do hereby declare said election to be in favor of the Stock Law and from and after thirty days from this date, it shall be unlawful for horses, mules, jacks, Jennetts and cattle to run at large within the limits of said Hunt County.

Witness my hand and official seal of Hunt County this the 23rd day of December A.D. 1907.

J. M. Manning, County Judge
Hunt County, Texas.

I, J. M. Manning, County Judge in and for Hunt County, Texas do hereby certify that the above and foregoing proclamation was duly posted ~~in~~ the Court House door at Greenville, Hunt County, Texas for a period of more than thirty (30) days prior to this date, and that the law prohibiting horses, mules, jacks and Jennetts and cattle from running at large in Hunt County, Texas is and shall be in force and effect from and after this date.

Witness my hand this the 24th day of January, 1908
J. M. Manning
County Judge, Hunt County, Texas.

Hunt County Stock Law of 1882 for Sheep, Goats, and Hogs

In the matter of the Petition of J. P. Clifton & others Petitioning this Court for an Election to vote on fence and Stock Law by the free holders in the hereinafter described Subdivision of Hunt County coming on to be heard and the Court after hearing the Petition and the therefore ordered by the Court that there be an Election of sheep and held in the bounds hereinafter described and specified and prohibit sheep goats and hogs from running at large in said bounds as herein after described and specified in accordance with an act entitled an act to carry into effect Section 22 and 23 article 16 of the Constitution of the State of Texas authorizing the passage of stock and fence law approved August 15th 1876 and it appearing to the Court that the law has been complied with in all respects in Petition It is therefore ordered that on the 19th day of March 1882 the same being on Saturday in accordance with the provisions of an act to determine whether or not said Subdivision of Hunt Co shall enact a Stock Law and fence law and prohibit the running at large of sheep goats and hogs in said limits which said limits and Subdivisions is bounded as follows to wit Beginning at the mouth of Hawk Branch on South Sulphur Shreve with said Branch to J. R. Cooks farm leaving him out Shreve E. B. R. Hall leaving him out Shreve South to Timber Creek Shreve with said Creek to Smiths Lake Shreve East to Job. Fox taking him in Shreve East to Wade leaving him out Shreve S. W. James Simpsons taking him in Shreve East to County Line Shreve North to William. Lowe taking him in Shreve West to three Coats taking him in Shreve S. W. to David. Youngs taking him in Shreve North to Widow Mitchells taking her in Shreve North to South Sulphur Shreve West with South Sulphur to the place of Beginning It is therefore ordered by the Court that said Election be held at Campbell and that Henry Brigham a free holder be appointed Presiding Officer and that said Election be held and that said Presiding Officer make due return of the same to the Law dis do.

and
4/14/82



Notes

- ¹ *Clarendon Land, Inv. & Agency Co. v. McClelland*, 23 S.W. 576, 577 (Tex. 1893).
- ² *Gibbs v. Jackson*, 990 S.W.2d 745, 747 (Tex. 1999).
- ³ TEX. AGRIC. CODE ANN. §§ 143.021–028, 033–077, 082.
- ⁴ TEX. AGRIC. CODE ANN. § 143.034, 082.
- ⁵ TEX. AGRIC. CODE ANN. § 143.072.
- ⁶ TEX. AGRIC. CODE ANN. §§ 143.021, 071.
- ⁷ Tex. Att’y Gen. Op. No. GA-0093 (2003).
- ⁸ *Ceniceros v. Pletcher*, No. 07-15-00427-CV, 2017 WL 2829325 (Tex. App.—Amarillo June 29, 2017).
- ⁹ *Pruski v. Garcia*, 594 S.W.3d 322, 326 (Tex. 2020).
- ¹⁰ *Id.* at 323.
- ¹¹ TEX. AGRIC. CODE ANN. § 143.102.
- ¹² TEX. AGRIC. CODE ANN. § 143.108.
- ¹³ TEX. AGRIC. CODE ANN. § 143.102 (It is important to note the statute also specifies that the portion of Recreation Road Number 255 located in Newton County between State Highway 87 and the boundary line with Jasper County is deemed a “highway” under this statute, making it closed range).
- ¹⁴ TEX. AGRIC. CODE ANN. § 143.101–102.
- ¹⁵ *Pruski*, 594 S.W.3d at 327; BLACK’S LAW DICTIONARY 888 (8th ed. 2006).
- ¹⁶ *Weaver v. Brink*, 613 S.W.2d 581, 583–84 (Tex. App.—Waco 1981).
- ¹⁷ *Evans v. Hendrix*, No. 10-10-00356-CV, 2011 WL 3621337, at *4 (Tex. App.—Waco Aug. 17, 2011).
- ¹⁸ *Pruski*, 563 S.W.3d at 330.
- ¹⁹ TEX. CIV. PRAC. & REM. CODE ANN. § 75.006(b).
- ²⁰ *Clarendon Land*, 23 S.W. at 577.
- ²¹ *Clarendon Land*, 23 S.W. at 577.
- ²² *Id.*
- ²³ TEX. AGRIC. CODE ANN. § 143.028(a).
- ²⁴ TEX. AGRIC. CODE ANN. § 143.028(a),(b)(1)–(4).
- ²⁵ *Tex. & Pac. Ry. Co. v. Webb*, 114 S.W. 1171, 1173 (Tex. 1908).
- ²⁶ TEX. AGRIC. CODE ANN. § 142.003(a).
- ²⁷ Tex. Att’y Gen. Op. No. KP-0278 (2019).
- ²⁸ TEX. AGRIC. CODE ANN. § 143.102.

- ²⁹ *Griffin v. Sansom*, 72 S.W. 864, 864 (Tex. Civ. App. 1903).
- ³⁰ *Nolan v. Mendere*, 14 S.W. 167, 168 (Tex. 1890).
- ³¹ *Conner v. Joy*, 150 S.W. 485, 485 (Tex. App.—Fort Worth 1912).
- ³² *Adair v. Stallings*, 165 S.W. 140, 141–42 (Tex. App.—Amarillo 1914).
- ³³ TEX. AGRIC. CODE ANN. § 143.121–123.
- ³⁴ TEX. AGRIC. CODE ANN. § 143.121(1).
- ³⁵ TEX. AGRIC. CODE ANN. § 143.122.
- ³⁶ TEX. AGRIC. CODE ANN. § 143.123.
- ³⁷ Statutory periods vary with the claim (anywhere between 3 and 25 years).
- ³⁸ *McDonnold v. Weinacht*, 465 S.W.2d 136, 144 (Tex. 1987).
- ³⁹ *Perkins v. McGehee*, 133 S.W.3d 287, 292 (Tex. App.—Fort Worth 2004).
- ⁴⁰ *Santana Oil Co. v. Henderson*, 855 S.W.2d 888, 889-90 (Tex. App.—El Paso 1993).
- ⁴¹ *Foote v. Texcel Exploration, Inc.*, 640 S.W.3d 574 (Tex. App.—Eastland 2022).

Acknowledgments

The authors gratefully acknowledge the invaluable assistance of Ms. Amber Miller of Crenshaw Dupree & Milam, L.L.P. in Lubbock, and Mr. James Decker of Shahan Guevara Decker & Arrot in Stamford, who provided innumerable insights into the subject matter of this handbook and reviewed its contents. The authors would also like to thank Britt Fisk and Connie Loveland for their willingness to share their outstanding photographs with us.

Photo Credits

Britt Fisk, Britt Fisk Photography – front and back covers
Kay Ledbetter, Texas A&M AgriLife Communications – page 9
Connie Loveland, C. Loveland Photography – pages 6, 18, and 20
Adam Russell, Texas A&M AgriLife Communications – page 13
Pexels – page 5
Pixabay – pages ii, iv, vi, 2, 10, 14, 16, 26



The information given herein is for educational purposes only. The Texas A&M AgriLife Extension Service does not make recommendations for any legal action nor for the content of any legal document. Specific legal questions should always be directed to an attorney-at-law who is licensed in Texas and familiar with agricultural law.

Texas A&M AgriLife Extension Service

AgriLifeExtension.tamu.edu

More Extension publications can be found at AgriLifeLearn.tamu.edu

Texas A&M AgriLife Extension provides equal opportunities in its programs and employment to all persons, regardless of race, color, sex, religion, national origin, disability, age, genetic information, veteran status, sexual orientation, or gender identity.

The Texas A&M University System, U.S. Department of Agriculture, and the County Commissioners Courts of Texas Cooperating.

Revised, June 2022