



North Carolina Fence Law and Liability for Livestock, Horses and Dogs

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North Carolina farmers and landowners often have questions about their legal rights and obligations concerning fences. A related area of concern is the potential liability for animals that cause injury, either on the landowner's own property or through straying from the landowner's property. This issue of the *NC State Economist* reviews the major legal doctrines in North Carolina concerning fencing and liability for animals, including livestock and poultry, horses and dogs.

North Carolina Is a Fencing-in State

North Carolina law requires keepers of livestock to enclose their livestock, poultry and horses with an adequate fence. Livestock is broadly defined as bovine or equine animals, swine, sheep or goats. Horses are included in this definition, regardless of whether they are kept for business or for pleasure. As a *fencing-in* state, North Carolina is distinguished from states located primarily, but not entirely, in the western U.S. where cattle grazing predominates, and landowners who want to keep livestock off of their property are forced to fence them out. North Carolina was also a *fencing-out* state in the 1800s, but the law changed around the turn of the twentieth century due to population growth and the expansion and increased importance of crop production.

Currently, there is no law in North Carolina regulating the type of fencing that must be used to

restrain livestock. The livestock keeper must take reasonable precautions to keep the animals within the fence. What is considered reasonable is determined by the type of livestock, the terrain, customary practices, past experiences and whether the livestock are kept for business or pleasure.

In contrast to the North Carolina requirement that livestock keepers act wisely to fence their animals, some other states have "legal fence" laws that specify the type of fencing that must be used. Although North Carolina's rule provides less explicit guidance than legal fence laws, it offers more flexibility and discretion to livestock keepers. Unlike Virginia and some other states, N.C. landowners are fully responsible for the cost and maintenance of their own fences. Absent agreement from the neighboring landowner, fences must be placed within the boundaries of their property.

It is acceptable practice for landowners to enter a contract to build and maintain a common fence; however, the agreement may not be enforceable against subsequent landowners, without some sort of deed restriction (covenant). Landowners may under certain circumstances agree to restrictive covenants that bind future owners of the land with regard to mutual obligations regarding fences. These sorts of restrictions are not often seen with agricultural lands. They are found more commonly in residential subdivisions that are developed specifically for buyers that are interested in keeping and riding horses.

Liability for Loose Livestock

Livestock keepers who do not act reasonably to keep their animals properly fenced are liable for damages caused by their stray animals. This potential liability could range from damage to a neighbor's vegetable garden to a fatal traffic accident. In addition, a livestock keeper in North Carolina who knowingly or recklessly fails to keep his animals fenced can be charged by the police or sheriff with a misdemeanor.

Liability for damages caused by stray livestock depend upon whether the livestock keeper took sensible steps to keep the livestock fenced. A person who fails to act reasonably is by legal definition negligent, and may be liable if the damages that occurred were a foreseeable result of the negligence. On the other hand, livestock keepers who have acted reasonably will not be liable even though livestock escaped. For example, a farmer may have a sound fence that has successfully contained his or her cattle. If a tornado knocks the fence down and the cattle immediately escape and are hit by a car, it is unlikely that the farmer will be liable for injury to the car or the driver. The farmer would not be expected to construct tornado-proof fences, although in this example he or she would be expected to act promptly to recover the stray cattle and repair the fence.

When livestock have escaped and caused damage, the question of whether the livestock keeper did or did not act prudently to restrain the animals is likely to be disputed. These disputes are resolved by negotiation between the parties, by insurance adjusters, or by juries in court.

Liability for Livestock on One's Own Property

Even where the livestock is successfully contained, a landowner may still face liability from injury to those who enter the land and thereby expose themselves to the livestock. The status of the entrant on the land is very important to determining liability for injuries. Adult trespassers are generally owed little and are unlikely to prevail in any action against the livestock

owner. However, those on the land with permission and children, with or without permission, are generally owed a much higher duty by the landowner. Some entrants with permission are owed a lower duty established by statute. These entrants include non-commercial recreational users of land and trails, and patrons of commercial equine establishments.

Those injured by livestock may sue, even when their grounds for suit are poor. This forces the landowner to incur legal fees and other expenses. Liability insurance, which usually obligates the insurer to defend the landowner at its cost, is therefore essential for all landowners (including renters) who keep livestock. Homeowners who own a horse may be unaware their homeowner's policy does not typically provide coverage for liability arising from injuries caused by the horse. Such individuals should obtain additional coverage for the horse.

Right to Impound Stray Animals

The North Carolina statutes provide a mechanism by which any person "may take up any livestock running at large or straying and impound the same." A person impounding stray livestock is required to give "good and wholesome feed and water" for the animals and immediately notify the owner, if known. To get the animal back, the owner must pay the costs of keeping the animal plus any damages caused by the animal. If the owner cannot be found or refuses to pay, there is a further procedure for providing public notice and conducting a public sale of the animal. North Carolina encourages impounding stray animals rather than killing them. A person who kills a stray when it was reasonably possible to impound may be civilly liable for its value and may even be guilty of a misdemeanor where the killing was done wantonly.

Division Fences

Division fences are also known as boundary fences. The law relating to division fences is driven by the law requiring that livestock be fenced in. If a property owner does not keep livestock, he has no duty to fence his property. Likewise, that owner has

no obligation to share in the cost of building or maintaining a division fence that a neighbor may wish to build.

Of course, neighbors have numerous incentives to negotiate about division fences. For instance, a landowner who decides to keep livestock may want to rely upon the fence already constructed by his neighbor. The landowner should reach an agreement in a written contract with the neighbor about responsibility for maintenance and possibly some payment for the value of the fence. Otherwise, he or she will be liable to his or her neighbor for damage the livestock cause to the fence or if the livestock escape through the fence.

Agreements about division fences should be put in writing to avoid later disagreements about each neighbor's responsibilities. A simple handwritten letter signed by both sides is usually effective, although an attorney can help to draft an agreement that will avoid future pitfalls. If neighbors are negotiating easements or covenants for fences, or if they want an agreement that will be effective against future owners, they should use an attorney to draft and properly record the agreement.

Dogs

Dogs are not considered livestock under the fencing laws. Nevertheless, there are numerous requirements that dogs be fenced or restrained. By state law, dog owners are strictly liable for any off-premises damage to livestock or poultry caused by their dogs. Strict liability means the dog owner is liable even if the owner took all reasonable steps to keep the dog restrained and the dog escaped anyway.

It is a misdemeanor to allow dogs to run unaccompanied at night, or to allow a female dog "in heat" to run at large at any time. State law places further restrictions on owners of dogs that are determined to be "dangerous" by a local authority; dogs that are fighting dogs; dogs that have attacked or viciously threatened a person; and dogs that have attacked another domestic animal on another's property. Owners of dangerous dogs that injure people face substantial fines and even imprisonment, as well as

strict liability to the victim.

Many local governments and counties also have "leash laws" or other ordinances that pertain to dogs. These ordinances regulate a wide range of issues, including the total number of dogs that may be kept. The local animal control office should be consulted for more specific information. Some homeowners associations also have rules governing the keeping of dogs if the properties in the subdivision contain covenants that permit such regulations. Even if there is no homeowners association, restrictive covenants in each deed in a subdivision may restrict dog ownership by each property owner in the subdivision. Restrictive covenants may be enforced by any property owner in the subdivision through a lawsuit.

It is often erroneously assumed by dog owners that North Carolina is a "one bite" state, meaning that liability for a dog cannot arise unless the dog has previously bitten or injured someone. While there are states where this is the rule, there are no free bites in North Carolina. Liability for injuries caused by a dog will depend upon whether the injury was foreseeable. Threatening behavior short of actual injury, as well as the general tendencies of the breed, are all factors that the court may consider in determining whether the dog owner should have taken additional steps to protect others. Breed remains controversial because there is often a great deal of variation in behavior within a breed; however, it is a factor that North Carolina courts have considered in assessing liability.

Animal Cruelty

Owners and caretakers of livestock, poultry, horses, and dogs have a legal obligation to properly care for those animals. Failure to properly care for one's animals can result in them being taken by a county or city authority. In addition, those subjecting animals or fowl to cruel or neglectful treatment may be criminally liable. Killing the livestock, poultry, horses or dogs of others without justification may also be a source of criminal liability.

Sources of Information

Sources of information include county or municipal animal control officers, insurance agents and homeowners associations. Where there is the possibility of a lawsuit, owners of livestock, poultry, horses or dogs should consult an attorney.

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