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Handbook of Florida Fence and Property Law: Duty to Fence[1]

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Preface

With approximately 19,000 livestock farms in the state, along with horse farms; orange groves; croplands of; soybeans, sugarcane, cotton, peanuts and many other agricultural and livestock facilities, livestock and farming have a significant impact on Florida's economy. Florida's agricultural economy has been required to coexist with rapid population and commercial growth in the state over the last twenty-five years. Conflicts between these interests bring prominence to issues such as the rights and responsibilities of adjoining landowners, farmers, and property owners in general. Due to the added importance placed on these areas of real property, the legal aspects of fences in the state of Florida have taken on significant importance.

This handbook is designed to inform property owners of their rights and responsibilities in terms of their duty to fence. Discussed areas include a property owner's responsibility to fence when livestock is kept on the property, the rights of adjoining landowners to fence, placement of fences, encroachments, boundary lines, easements, contracts, nuisances, and a landowner's responsibilities towards persons who enter his or her property.

This handbook is intended to provide a basic overview of the many rights and responsibilities that farmers and farmland owners have under Florida's fencing and property law. Readers may value this handbook because it informs them about these rights and responsibilities. However, the reader should be aware that because the laws, administrative rulings, and court decisions on which this booklet is based are subject to constant revision, portions of this booklet could become outdated at any time. This handbook should not be viewed as a comprehensive guide to fencing and property laws. Additionally, many details of cited laws are left out due to space limitations. This handbook should not be seen as a statement of legal opinion or advice by the authors on any of the legal issues discussed within. This handbook is not a replacement for personal legal advice, but is only a guide to educate and inform the public on issues relating to fencing and property laws in Florida. For these reasons, the use of these materials by any person constitutes an agreement to hold the authors, the Institute of Food and Agricultural Sciences, the Center for Agricultural and Natural Resource Law, and the University of Florida harmless for any liability claims, damages, or expenses that may be incurred by any person as a result of reference to or reliance on the information contained in this handbook.

Readers wishing to find further information from the Florida Statutes may access those statutes online at http://www.leg.state.fl.us/STATUTES/.

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Duty to Fence

As a livestock owner, do I have a duty to fence?

Florida law does not impose on the owners of livestock and animals the duty to fence, *Fisel v. Wynns*, 667 So.2d 761, 762 (Fla. 1996), but as discussed below, owners may be civilly or criminally liable for animals that stray onto public roads.

What if I do not have a fence and my livestock escape?

Owners who intentionally, knowingly, or negligently permit their animals or livestock to run at large or stray upon the public roads are liable for any resulting injuries or property damage, and may even be guilty of a second-degree misdemeanor. Fla. Stat. §§ 588.15, 588.24 (2021). Criminal penalties may include a term of imprisonment not exceeding 60 days and/or a fine of as much as $500. Fla. Stat. § 588.24 (2021), citing Fla. Stat. §§ 775.082, 775.083 (2021). Similar criminal penalties may apply to the owner of livestock carrying any contagious diseases, who knowingly and without permission from another owner allows his livestock to run at large or come into contact with other animals. Fla. Stat. § 828.16 (2021). Case law examples for civil liability include *Hughes v. Landers*, 215 So.2d 773 (Fla. 2d DCA 1968) (involving an automobile collision with a horse), *Prevatt v. Carter*, 315 So.2d 503 (Fla. 2d DCA 1975) (involving a motorcycle collision with a cow), *Davis v. Johnson*, 288 So.2d 554 (Fla. 2d DCA 1974) (involving a motorcycle collision with a cow), and *Fisel v. Wynns*, 650 So.2d 46 (Fla. 5th DCA 1994), *aff'd*, 667 So.2d 761 (Fla. 1996). Under current Florida law, officials have the right to impound and sell off animals found running at large, regardless of the owner's liability. Fla. Stat. §§ 588.16–588.25 (2021).

Is there any liability if a car strikes an animal that strays onto a public highway?

Whenever a car or truck collides with an animal that is at large on a public highway and the driver is killed by the resulting collision, the owner of the animal "shall have no cause of action against the personal representative of the estate of the said deceased operator" for damage to the animal. Fla. Stat. § 768.12 (2021). If the animal owner is not negligent, the animal owner may bring suit for negligence against a driver who survives the collision and causes damage to the animal. *See Toole v. Dupuis*, 735 So.2d 582, 582–83 (Fla. 4th DCA 1999); *Boswell v. Russell*, 819 So. 2d 925, 926–28 (Fla. 5th DCA 2002). The driver or the driver's estate may have a cause of action against the animal owner for injury to or death of the driver or any passengers if the complainant can prove both ownership of the animal and that the owner at least allowed the animals to stray. *See* Fla. Stat. § 588.15 (2021); *Selby v. Bullock*, 287 So. 2d 18, 20–21 (Fla. 1973).

Liability may be assessed or not assessed against the owner of an escaped animal based on the facts of the case. Generally, a landowner can be liable for negligence if they failed to take reasonable steps to prevent injury caused by an escaped animal. However, if an animal escapes and causes injury *despite* the landowner taking all reasonable precautions, there may be no civil liability. For example, in *Hughes v. Landers*, Hughes and his daughter collided with a horse while driving their automobile resulting in the daughter's death. 215 So.2d at 774. The lawsuit against the animal's owner provided evidence showing the general disrepair of the fence used to corral the horse. *Id.* (The fence was negligently maintained as shown by the facts that there were no hinges or locks on the cattle gap gate, the gate was secured only by two rotted and flimsy ropes, the bottom rope was untied, and a section of the fence had loose wire where two posts were leaning at a forty-five-degree angle). Also, in *Prevatt v. Carter*, where a motorcyclist driving at night suffered injuries when he collided with a black cow, the court said the motorcyclist could establish the owner's negligence by showing that the fence surrounding the livestock was in disrepair and that the owner knew his livestock were escaping from the grazing area. 315 So.2d at 505 (The mere fact that livestock are running at large on a public highway does not automatically mean that the owner intentionally or negligently permitted the animals to run at large). The plaintiff carries the burden of proving negligence. For example, there would be no negligence if a horse escaped from a closed gate that could only be opened by human hands, *see Lee v. Hinson*, 160 So.2d 166, 166-67 (Fla. 2d DCA 1964), but negligence could exist if an animal could open the gate by slipping a chain off a bent nail, *see James v. Skinner*, 464 So.2d 588, 589 (Fla. 2d DCA 1985) (distinguishing the facts from those in *Lee*). Courts have determined that an owner whose cows broke through three separate enclosures before reaching a public road was not careless or negligent, *see Welch v. Baker*, 184 So.2d 188, 192 (Fla. 1st DCA 1966) ("The undisputed evidence showed that the defendant had placed his cattle . . . within three fenced enclosures, so that the cattle would have to

break down all three fences . . . before they could reach the public road."), but reasoned that negligence may exist when a properly maintained fence was not strong enough to contain a large bull. *Hanson v. Scharber*, 749 So.2d 563, 564 (Fla. 2d DCA 2000). An owner might escape liability if there is evidence, such as unknown tire tracks or a different knot used to tie a gate, that another person caused the animal's release. *See Gordon v. Sutherland*, 131 So.2d 520, 521–22 (Fla. 3d DCA 1961).

If my fence is broken or damaged, can someone other than the owner of the property be held liable?

A person who causes the destruction of part of someone else's fence could be liable for any losses resulting from the fence being brought down. Fla. Stat. § 810.115(3).

Is there any liability if I do not own the animals that are kept on the land I own?

Liability for damages resulting from an animal that is at large remains with the legal owner of the animal and not the person who is merely the legal owner of the land on which the animal is located. *See Davidson v. Howard*, 438 So.2d 899, 902 (Fla. 4th DCA 1983); *Florida Power & Light Co. v. Morris*, 944 So.2d 407, 409–410 (Fla. 4th DCA 2006).

Who is liable if only one family member is at fault and the entire family owns the animal?

Under Florida law, a wife is not liable for her husband's tort when she has no knowledge of his tortious conduct and does not authorize or participate in the act. *Boswell v. Russell*, 819 So.2d 925, 927 (Fla. 5th DCA 2002). Under the Warren Act, a wife's ownership of a bull merely imposes a duty on her to not act negligently in allowing it to stray upon the public roads. *Id.* at 928. It did not impute her husband's knowledge or negligence to her. *Id.*

Do any industries have a duty to fence in Florida?

Several industries have a duty to fence under certain circumstances. Any company or individual not engaged in actual bona fide mining operations must either fill in or fence any hole that is larger than two feet wide and two feet deep to prevent livestock or domestic animals from falling into any holes. Fla. Stat. § 768.10 (2021); Fla. Stat. § 768.11 (2021) (discussing measure of damages). Landfills, solid waste facilities, and construction and demolition debris disposal facilities must include fences to prevent unauthorized access or waste disposal. Fla. Admin. Code. R. 62-701.500(5) (2015); 62-701.710(4)(f) (2015); 62-701.730(4)(e), (7)(c) (2016). The owner and manager of an amusement ride must fence or otherwise restrict any areas where people may be endangered by the operation of the ride. Fla. Stat. § 616.242(11)(e) (2021).

Any junkyard within 1,000 feet of any interstate or federal-aid highway must be screened by natural objects, plantings, fences, or other appropriate means so that the junkyard cannot be seen from the road. Fla. Stat. § 339.241(3)(a) (2021). The law also requires that the fence always be kept in a condition of good repair. Fla. Stat. § 339.241(4)(a) (2021). Failure to do so may result in fines against the owner of the facility. Fla. Stat. § 339.241(6) (2021).

Florida law no longer imposes a duty on railroads to erect fences to prevent livestock from getting on the tracks and causing collisions. Fla. Stat. § 337.401 (2021). Some Florida case law, however, still indicates that railroads passing through livestock farms have the duty to keep a fence in good repair to prevent livestock from getting onto the railroad tracks, because the railroad could be liable for the death or injury of livestock resulting from the failure to maintain the fence. *Seaboard Air Line Ry. Co. v. Maige*, 147 So. 215, 216–17 (Fla. 1933), *aff'd*, *Doral Country Club, Inc. v. Klatzkin*, 433 So.2d 57 (mem.) (Fla. 3d DCA 1983).

Do any individuals other than livestock owners have a duty to fence in Florida?

Private game preserves or farms must fence the area to prevent the escape of domestic game and the entrance of wild game. Fla. Stat. § 379.302(2) (2021). Special fencing requirements exist for anyone who keeps captive wildlife classified as a Class I or Class II carnivore. Fla. Admin. Code Ann. R. 68A-6.010(4)(a)(1) (2019); 68A-6.013(4)(b)(4) (2019). Residential pool owners may opt to enclose their pools to meet the safety feature requirement and to pass the final pool inspection. Fla. Stat. §§ 515.27(1)(a), 515.29 (2021). Additionally, local ordinances may impose duties on swimming pool owners to erect and maintain a fence around pools.

Do any prohibitions on fencing exist under Florida law?

It is a first-degree misdemeanor for anyone to obstruct a public road or highway with a fence or other obstruction. Fla. Stat. § 861.01 (2021). The confinement of animals without fresh water, food, regular exercise, and a change of air could result in a charge for a first-degree misdemeanor.

Fla. Stat. § 828.13(2) (2021). Until June 2000, it was illegal to fix or cause to be fixed on unfenced property any stakes or canes or anything that could kill or maim cattle or other livestock. Fla. Stat. § 588.07 (1999).

Summary

Florida law requires waste disposal facilities, companies that dig open pits, and owners of junkyards to fence their property. Railroad companies may still be liable for any injuries to livestock resulting from their failure to keep their fence in good repair. For junkyards, the duty to fence arises from those junkyards which are within 1,000 feet of any interstate or federal-aid highway. Special fencing requirements also exist for private game preserves, swimming pools, and amusement rides. It is illegal for anyone to obstruct a public highway with a fence, or to confine animals without food and water.

Further Information

Handbook of Florida Fence and Property Law
https://edis.ifas.ufl.edu/entity/topic/BOOK_Florida_Fence_and_Property_Law