

Handbook of Florida Fence and Property Law: Maintaining the Boundaries and Grounds¹

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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, and 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 co-exist with rapid population and commercial growth in the state over the last twenty-five years. Conflicts between these interests bring to prominence 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, the placement of fences, encroachments, boundary lines, easements, contracts, nuisances, and a landowner's responsibilities towards persons who enter his 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court decisions on which this booklet is based are subject to constant revision, portions of this booklet could become outdated at any time.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 inform the public on issues relating to

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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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Maintaining the Boundaries and Grounds

What is a nuisance?

Although as a general rule a property owner is free to reasonable use of that property, a property owner cannot use the property in a way that interferes with an adjoining landowner's right to enjoy his property. If he does, a nuisance may exist (38 Florida Jurisprudence 2d *Nuisances* section 1). Two major forms of nuisance exist: public and private. A private nuisance affects only private rights in property and harms only a limited number of individuals. A public nuisance causes damage to public rights, public order, or the general public (38 Florida Jurisprudence 2d *Nuisances* section 6). Nuisances can exist in a variety of examples ranging from operation of an illegal activity on the property, to noise pollution, or to the erection of a fence. Both public and private nuisances can involve criminal actions or lawsuits, which can be used to obtain damages or an injunction against the landowner. An injunction would result in a court order to force the landowner to stop using the land in any way that was interfering with the adjoining landowners' uses (38 Florida Jurisprudence 2d *Nuisances* sections 79 and 87).

When do courts find a nuisance?

Not every use of property that inconveniences another person is automatically a nuisance. Such use may become a nuisance if the circumstances of the case show that the use is continued and causes substantial harm to legal rights. The motive or intention of the property owner causing the activity is immaterial to the finding of a nuisance (38 Florida Jurisprudence 2d *Nuisances* sections 14 and 20). Often, a statute may declare a certain use to be a nuisance. A court may decline to grant an injunction if it finds that the party seeking relief has an improper motive (38 Florida Jurisprudence 2d *Nuisances* section 93).

Fence is a nuisance

W builds two fences. Both fences hinder the use of a private road. The court found that when a fence hinders the use of a road, it is considered a nuisance (*White Sands, Inc. v. Sea Club Condominium Association, Inc.*, 581 So.2d 589 [Fla. 2nd DCA 1990]).

Fence is not a nuisance

In this case, P complained that D, an adjoining landowner, had built a metal-slatted, chain-link fence that was high enough to block the view of their neighborhood waterfront and make their neighborhood appear more like an institution. D claimed to have built his fence to prevent trespass by children and burglary as well as for privacy purposes. The court allowed the fence to remain because other similar fences had been built in the neighborhood without complaint and the fence did not completely cut off P's beach view. Additionally, there was no spite or malice on D's part (*Walden v. Van Harlingen*, 220 So.2d 670 [Fla. 1st DCA 1969]).

What other kinds of requirements exist in maintaining boundaries and grounds?

Property can possess numerous restrictions that greatly affect the use of the land. The method and purpose of ditches, the amount of water used on any given day, or the types of pesticides used to kill insects are all examples of regulated practices that impact boundaries and neighboring properties. These

regulations come from federal, state, and local governments, as well as special districts such as water management districts. For example, under Florida's Citrus Health Plan, you may be required to remove certain vegetation—under Florida's efforts to combat citrus canker, state law requires the removal of any infected or infested citrus, non-approved planted citrus, and citrus that has sprouted by natural means in regulated areas (Florida Statutes section 581.1843). However, certain individuals may qualify for compensation for the loss of citrus trees (Florida Statutes section 581.1845). Florida may issue an “Agricultural Warrant” if there is probable cause to believe any land, plant, or livestock is infested or infected with a pest or pathogen (Florida Statutes section 581.031).

What if pollution crosses from my property to another?

Pollution or toxins may migrate past the boundaries of neighboring properties. This may occur through watershed, wind, or soil. There are numerous federal, state, and local laws dictating the handling, removal, and disposal of contaminated land or materials. In *Aramark Uniform and Career Apparel, Inc. v. Easton* (894 So.2d 20 [Fla. 2004]), the court held that Florida Statutes section 376.313(3) provides an action for damages against an adjoining property owner with hazardous substances under strict liability (requiring no proof of causation). In that case, a business with toxins on site was found strictly liable for the discharge and contamination in a neighboring property (*id.*).

Summary

In managing a property, consideration should be given to the effect an action or structure may have on adjacent properties. When the use of a property causes substantial harm to the rights or condition of a neighboring property, the one affected by the use may bring a nuisance action. Federal, state, and local laws may require the removal of certain vegetation or anything that violates the rights of those using neighboring properties for private or public purposes. The law may require certain postings on the fences, depending on the use of the property. If pollution migrates over the boundary of one property to a

neighboring site, the property owner originally storing the contaminant may be strictly liable for clean-up.

Further Information

Circular 1242, Handbook of Florida Fence and Property Law
http://edis.ifas.ufl.edu/TOPIC_BOOK_Florida_Fence_and_Property_Law