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# Avoiding a Border War: Beginning a Conversation with a Neighbor about Border Fences

## Introduction

Neighbors often wrangle over the location, cost, maintenance, and character of rural fences. Many people dread having a conversation with a neighbor about the fence that separates their properties, fearing their neighbors will refuse to discuss the matter, any conversation they might have will not fully address their fencing concerns, and that such a dialogue may damage their relationship (if they have one).

How might you negotiate an agreement with a neighbor regarding border fences that both sides will find satisfactory? In this publication we provide a series of questions to consider in deciding whether to engage neighbors in such a conversation and continue forward to identify key factors to consider in the conversation itself. While it's not possible to provide a standard set of guidelines for dealing with the many types of fencing issues that can arise, this general structure for thinking about the issue can be used to resolve issues to the parties' mutual benefit.

## Preparation

The first steps to address your fencing issue are to define the problem, gather history, and assess hypothetical alternatives. As you do this you may realize that a conversation with a neighbor is not necessary. If it appears that a conversation is still necessary, then the work of this step will be useful in initiating the conversation and negotiating a satisfactory resolution.

### What is the proper terminology for a border fence?

Under Wyoming Statute § 11-28-106, a fence which "separate[s] the owner's land from that belonging to some other person" is called a partition fence.

## 1. What is the nature of your dissatisfaction?

To better understand whether having this conversation is necessary and worthwhile, first understand exactly what about the current situation is troubling to you. Fencing disputes often concern one or more of the following:

- Aesthetics (how the current fence looks)
- Safety
- Maintenance/repair (the current status of the fence)
- Sharing the cost for maintenance or construction of the fence
- Access (*e.g.*, ability to access state or federal lands, enclosed private lands, public roadway rights to timber or minerals, closed or locked gates, *etc.*)
- Locating or relocating the fence
- Functionality (does the current fencing satisfy your needs?)
- Compliance with a pre-existing fencing agreement

## 2. If the conflict involves an existing partition fence, what is the fence's history?

If an existing partition fence is at issue, information regarding its history may clarify the issue or uncover a potential resolution. You might collect this information prior to the conversation or as part of a requested information collection conversation with your neighbor. Such information might include:

- When was the fence constructed?
- Who - which of the parties or an independent contractor - established it?
- Why was it established? What purpose was it intended to serve?
- Why was the fence placed where it is (it may not lie on the property line)?

- How was the design (type, materials, *etc.*) of the fence determined?
- Has the fence been changed, either in its structure or location? Who made these changes? On what basis?
- What access rights were previously negotiated regarding this fence? Who was covered by these rights?
- Was any earlier agreement struck between the parties governing its structure, location, maintenance, or sharing of costs?

A partition fence may well have been established by one of the landowners to address his/her particular concerns. In other instances, the previous landowners constructed the fence together, in accordance with an oral agreement. The current parties may have very different understandings as to the nature of these agreements. It may be that the original need for the fence no longer exists. A dialogue with a neighbor can serve to inform both parties as to the “whys” regarding the current fence and to clarify any shared interests in modifying it as well as the fencing agreement.

### 3. **What interests might the neighbor have in maintaining the *status quo* or modifying the current partition fence?**

Your neighbor may also be unhappy with the existing partition fence. Prior to initiating a conversation regarding this fence, gather some information on your neighbor’s interest in either maintaining the *status quo* or making changes in the fence or the current fencing agreement.

The neighbor’s concerns will generally fall into one or more of the categories listed earlier in Question 1. In reviewing this list, ask yourself two additional questions:

- Why might your neighbor be interested in participating in the specific changes you are recommending?
- What additional interests of your neighbor must be addressed for him/her to participate?

It is a simple fact that any conversation or negotiation regarding a partition fence will be more difficult if one of the parties does not perceive that s/he will benefit from a change from the *status quo*. Contrast that case to instances when both parties believe that their current partition fence is in need of repair and such repairs will benefit their interests. The parties’ shared belief as to the need for repairs can provide ground to discuss the nature of the repairs, any changes in structure or location (tied to each party’s interests), as well as how to fairly split the resulting costs.

### 4. **What other ways can you address your concerns besides directly negotiating with your neighbor regarding the current status of your partition fence?**

First, you may modify the border fence on your own, subject to the terms of any existing agreement and existing property law. While your neighbors may benefit from your unilateral acts (by not having to bear any of the repair costs), these modifications may ignore or even harm their interests.

Second, when a change in use of your land has motivated your interest in having such a conversation, you may again unilaterally carry out the proposed change, without modifying the fence. For example, a new business may be started or additional or different animals placed on the land. The current fence may well fail to address either party’s interests under this change in circumstances, creating bad feelings on both sides and making more apparent the need to modify the fence.

#### **What is a lawful fence?**

Wyoming Statute § 11-28-102 establishes specific criteria for “lawful fences:”

“(a) The following are lawful fences in this state:

- (i) A fence made of steel, concrete or sound wooden posts and three (3) spans of barbed wire not more than fifteen (15) inches or less than ten (10) inches apart, or two (2) spans of barbed wire with a wooden rail on top. Wooden posts shall be at least four (4) inches in diameter. Posts shall be set firmly in the ground at least twenty (20) inches deep, at no greater distance apart than twenty-two (22) feet between the posts or thirty-three (33) feet with at least two (2) iron or wooden stays between the posts. Stays shall be placed equal distance apart from themselves and the post on either side;
- (ii) A post and board fence made of sound posts not less than four (4) inches in diameter set substantially in the ground not more than ten (10) feet apart, with three (3) boards sold as one (1) inch lumber eight (8) inches wide, and not more than ten (10) inches apart, or four (4) boards sold as one (1) inch lumber six (6) inches wide, not more than eight (8) inches apart, securely fastened with nails or otherwise;
- (iii) A four (4) pole fence with round poles not less than two (2) inches in diameter at the small end, with either upright or leaning posts not more than sixteen (16) feet apart, and securely fastened with nails, wires or otherwise.

(b) All other fences made and constructed of boards, rails, poles, stones, hedge plants or other material which upon evidence is declared to be as strong and well calculated to protect enclosures, and is as effective for resisting breaching stock as those described in subsection (a) of this section, shall be considered a lawful fence.

(c) Any fence enclosing any hay corral situated outside of any field or pasture enclosed by a lawful fence, shall be at least six (6) feet high, constructed of boards, poles or wire. The posts shall not be more than eight (8) feet apart and set twenty-four (24) inches in the ground. If the fence is constructed of barbed wire there shall be at least seven (7) spans of wire, and all wires shall be kept properly stretched. Any fence better than the above described fence is a lawful fence.”

Third, you may file suit seeking to enforce the terms of the existing fencing agreement. This solution can be problematic for both sides if the governing agreement is oral. Predicting how the court might determine what was covered in the original understanding may be difficult.

Fourth, where a rural subdivision is involved, the disagreement may be addressed within a subdivision agreement or specific covenant terms in the parties' deeds. If you are subject to these terms, reread your documents to see how the conflict is addressed.

Fifth, when no partition fence exists or the existing fence is in disrepair, you may apply to the Wyoming courts to be reimbursed for a portion of the fencing costs. Wyoming Statute § 11-28-106 provides:

*“The owner of any lawful fence which is or becomes a partition fence separating the owner’s land from that belonging to some other person may require the person to pay for one-half (1/2) of what it would or does actually cost to construct the partition fence. In case of refusal, the owner may maintain a civil action against the person refusing and is entitled to recover one-half (1/2) of what it would or did actually cost to construct that portion of the partition fence used by the person and cost of the suit. The joint users of a partition fence shall contribute to the cost of maintenance in proportion to their respective interests and if either refuses to pay his share of the cost of maintenance, the other may recover maintenance costs in the manner provided for recovering the cost of construction.”*

Sixth, you might file a criminal or civil complaint under Wyoming statutes if the neighbors' actions are inconsistent with their statutory duties. For example, Wyoming Statute § 11-28-103(a) provides for both a civil and criminal action against “[a]ny person who constructs or maintains any unlawful wire fence.” Other statutory provisions cover specific instances when fences must be built, the closing of gates, etc.

Seventh, you might seek to involve a third-party mediator to resolve the fencing conflict. Mediators are not judges; their role is to assist parties in brainstorming solutions to a shared problem. Additional information and names of mediators for fencing disputes can be obtained from Wyoming's Agricultural and Natural Resources Mediation Service at (307) 777-8788.

## Initiating and Carrying out the Conversation

In the preparation phase, you gathered history and assessed options other than a direct negotiation (conversation) with your neighbor. Based upon your analysis, you may decide that working with your neighbor will lead to a better result. For example, you may believe any problems can be addressed by clearing up a misunderstanding regarding the current fencing agreement. Many resolutions will require you to propose action (such as repairs or replacements) and come to

an agreement with your neighbor as to which action would be best and how this action will be implemented. What must you consider in initiating and carrying this conversation?

### 5. Can you frame your request for a conversation in a neutral and inviting way?

A key to beginning any conversation is to state the request in a neutral and inviting way. This is particularly useful when parties have different perspectives regarding the nature and resolution of a conflict. Listeners will become defensive if they feel attacked and may well refuse to participate. It is important, therefore, to fairly summarize the triggering facts before stating your desires for this conversation. Additionally, it is worthwhile to attempt to state the request in such a way as to address your understanding of the other side's interest in resolving this conflict through dialogue rather than going to court or in some other way.

Your opening request should contain four elements:

- A neutral description of a triggering event, if any, avoiding any reference to blame or intent.
- An indication of the speaker's interest in resolving the identified problem.
- An indication of how the listener's interest might also be addressed in carrying out this conversation.
- The request itself, setting forth what will be covered in the conversation, when and where it will occur, and who will be involved.

Consider a dispute regarding maintenance or status of a partition fence. You might frame the request by describing what has happened in the past (e.g., past problems, framed in a neutral way), the parties' shared interests in ensuring the fence serves both of their interests (e.g., keeping the livestock on their property, keeping the livestock [or children] out of dangers on the other's property, etc.), and establishing a specific time and agenda for the subsequent conversation or meeting.

What about a dispute regarding the location of the fence? You might frame the request to your neighbors by describing your understanding of where the boundary lines lie, your shared interest (e.g., in clarifying and respecting property lines, limiting the cost of construction, etc.), and requesting a focused dialogue on alternative ways to address both parties' concerns.

### 6. Do you have a common understanding of the problem - have you walked the fence with your neighbor?

One way to lessen misunderstandings and identify shared benefits regarding a partition fence is to walk the fence with your neighbor. With both of you looking at the same situation, you can develop a common understanding as to why the fence was originally located or constructed as it was. This shared viewing will also give both parties an opportunity to better understand why particular aspects of the fence may now be creating problems for the other side.

Additionally, when walking the common borders, neighbors may also spot other potential issues and learn of shared interests, beyond the fencing question, such as:

- Weed control,
- Safety, or
- Access issues

that might also be addressed through modifying or moving a fence, changing the terms of the original agreement, or carrying out some other common action.

**7. What if the conflict concerns a factual matter - whether the fence is located on the boundary or satisfies the Wyoming statute's "lawful fence" requirements?**

If the conflict involves a factual matter, the parties may well agree to have a specific expert - an engineer, a surveyor, *etc.* - make a factual determination. For example, if the boundary isn't clearly or permanently marked (with a post usually), then the two owners should be present to agree on the location of markers, even if a surveyor is involved. Such a factual determination may resolve the disagreement or - more likely - encourage further conversation if other shared concerns might justify a new agreement that goes beyond simply the properties' borders or the statutory minimum fencing requirements.

**8. Arm yourself with additional information regarding potential solutions - what other options are there, what will they cost, how long will they take, *etc.*?**

While some conflicts may focus on factual disagreements, others will require additional factual information to better understand the nature of any proposed solution. You can help facilitate the conversation by gathering information on the potential costs of the construction or maintenance of any recommended solution. Remember, however, that if this is indeed a conversation between neighbors rather than a demand, you must be open to other potential solutions beyond the one you might favor. Additional data may thus be required as the conversation identifies other options that will better address both parties' concerns.

**9. Arm yourself with additional information - why is this a fair outcome?**

What if a disagreement arises as to what might constitute a fair outcome? Each party is likely to have his/her own answer to this question. A successful agreement will generally address both parties' concerns. What about the distribution of costs? In determining how to split the cost of any changes, parties may rely on the terms of Wyoming Statute § 11-28-106, which obligates each party to bear one-half (1/2) the costs of that portion of a partition fence "used by that person." Of course, parties may agree to different terms. For example, you might propose that the neighbor provide the material and you will provide the labor. Alternatively, parties might agree to equally split the costs of a surveyor or hiring someone to install the minimum "lawful" wire a fence, and one of the parties assuming full responsibility to cover any additional costs for any other fencing improvements.

## What if they say no?

No matter how reasonable you may be, sometimes your neighbor will say no. What should you do? There are four things you should do.

First, step back and assess the situation. Do not get mad or challenge their motives. If you find yourself getting angry, take a time out.

Second, when you can focus, summarize your understanding and ask "what else is necessary to come to an agreement?" Why might the neighbor say no? Parties may say no:

- As a matter of strategy; they believe you will provide a better offer if they delay saying yes.
- They believe they will be better off without any agreement.
- An interest of theirs has not been addressed in the proposed solution.

By asking this question rather than challenging your neighbor's actions or intent, you can avoid an emotional blow up, gather additional information, and brainstorm a new option that addresses any undisclosed interest. Ask them again if there is some other option that should be considered.

If they provide an additional option, ask them to explain how this option will satisfy both parties' concerns. Do not directly challenge their option. Instead, ask them to show you how your concerns are also addressed. In educating you, they often will also educate themselves regarding any limitations their option might have ("in teaching you they teach themselves"). This will give you an opportunity to ask them to brainstorm additional options that have these same benefits without the limitations they identified.

Third, do some reality testing. In a neutral tone, summarize what you see will happen and what your options will be if an agreement is not reached. You have already identified these options for yourself earlier in answering Question 4 in the preparation phase. They range from specific self-help remedies to involving a mediator or going to court. Remember, in summarizing these options your intent is to provide your neighbor with information and not to make a threat. Your goal is to clarify to your neighbor what will happen and encourage him/her to continue brainstorming to find a better solution that addresses each of your concerns.

It is also important to ask "what if" questions to determine if the proposed solution is both workable and satisfactory to both sides. Your agreement should be specific: identify who will be responsible for carrying out specific tasks, timing, and distribution of costs. It should consider "what will happen if" questions - damage to the fence, notice if cattle are going to be moved, to ensure gates are closed, *etc.* In completing this step you lessen the likelihood of subsequent misunderstandings and increase chances that the agreement will be carried out.

Finally, prepare to implement your back-up solution. Your neighbor may not believe that you are serious when you lay out – in a nonthreatening way – what your options are. These alternatives become real when you contact a contractor or an attorney to implement your alternatives.

Of course, it's rare that a landowner will need to resort to a lawsuit. Your first step should be to talk to the neighbor about how to tackle the problem. If the fence is in poor repair, then your neighbor will probably be delighted that you're taking the initiative to fix it.

## Concluding Comment

It is frequently beneficial to reach an agreement with your neighbor about the building or repair of a dividing fence rather than to attempt to solve the problem on your own. Issues such as the position of the fence, its design and construction, and the cost of the fence, should all be put in writing so that, if legal proceedings are necessary, a clear statement of the agreement exists.

For more information, the companion piece to this publication is *If You Fence It, They'll Stay Out*, by Cole Ehmke, UW Cooperative Extension Service. Available at [www.uwyo.edu/CES/FRM/](http://www.uwyo.edu/CES/FRM/).

## General Tips for a Fence Conversation

1. Gather additional information regarding the fence and your options before requesting the conversation.
2. Frame the request in a neutral way.
3. Walk the fence.
4. Avoid inflammatory language; avoid reacting to inflammatory language; consider negotiating the ground rules for the conversation; involve a mediator.
5. Asks questions rather than assuming or making statements - make sure you understand their interests and concerns regarding the fence.
6. Explain your interests and concerns regarding the fence - make your concerns real for your neighbor by giving examples.
7. Do not fall in love with your solution until both sides accept it; generate many options that address both parties' interests and concerns.
8. Be open to new ideas while persistently protecting your underlying interests and concerns
9. Do reality testing - ask "what if"; do not let them agree to a bad idea - it will damage any relationship and the agreement will not be carried through.
10. Fashion your agreement on a fair standard or outcome - does it address all side's interests; is it a better outcome than is otherwise currently available by going to court?

## Summary of Steps

### Preparation

1. What is the nature of your dissatisfaction?
2. If the conflict involves an existing partition fence, what is the fence's history?
3. What interests might the neighbor have in maintaining the *status quo* or modifying the current partition fence?
4. What are parties' alternative(s) if no agreement can be reached regarding the current status of their partition fence? Options include
  - a. Modify the border fence on your own, subject to the terms of any existing agreement and existing property law.
  - b. If a change in use of your land has motivated your interest in having such a conversation, you may again unilaterally carry out the proposed change without modifying the fence.
  - c. File suit seeking to enforce the terms of the existing fencing agreement.
  - d. If a rural subdivision is involved, then the disagreement may be addressed within a subdivision agreement or specific covenant terms in the parties' deeds.
  - e. If no partition fence exists or the existing fence is in disrepair, then you may apply to the Wyoming courts to be reimbursed for a portion of the fencing costs.
  - f. File a criminal or civil complaint under Wyoming statutes if the neighbors' actions are inconsistent with their statutory duties.
  - g. Seek a third party mediator to help resolve the fencing conflict.

### Initiating and Carrying Out the Conversation

5. Can you frame your request for a conversation in a neutral and inviting way?
6. Do you have a common understanding of the problem - have you walked the fence with your neighbor?
7. What if the conflict concerns a factual matter - whether the fence is located on the boundary or satisfies the Wyoming statute's "lawful fence" requirements?
8. Arm yourself with information regarding potential solutions - what other options are there, what will they cost, how long will they take, why are they reasonable (fair), *etc.*?
9. Arm yourself with additional information - why is this a fair outcome?

### What if they say no?

- Step back and assess the situation.
- Gather additional information regarding unaddressed interests and brainstorm additional solutions.
- Engage in reality testing - in a neutral way explain to them what will happen if an agreement is not reached.
- Prepare to implement your backup alternative.

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