

Fencing Your Home on the Range

Today there are more private homes than ever located in our rural areas. Residents here share a love for the open spaces they live in, spaces often made up of intermingled public lands and 100-year-old family ranches. These areas provide wildlife habitat, access for recreation, scenic views and economic stability. But they also present a variety of challenges, often much different than those experienced by city-dwellers.

For new residents and ranchers alike, one of these challenges is to understand and accommodate each other's needs with regard to livestock. Colorado has traditionally been an "Open Range" or "fence out" state. This means that landowners who prefer not to have livestock on their property are responsible for fencing them out. But with this responsibility also come certain rights and many questions. These issues are addressed here in terms of the questions most often asked by homeowners and ranchers.

Westerners have always relied on each other, working together to make their way of life in these remote areas possible. In the spirit of that tradition, the existing federal and state laws regarding fences and open range described here can form the foundation for neighbors to find solutions to living with each other and livestock.

My property isn't fenced and livestock are wandering onto it. What can I do?

Because Colorado is an Open Range state, livestock operators face no criminal penalties when their livestock (including horses) wander onto unfenced private property. Without a "lawful fence," you have no civil recourse either. Fencing your property, either as a good neighbor or in cooperation with your neighbors and the livestock owner can avoid future problems.

Try to contact the livestock owner first. Most ranchers don't intend their livestock to stray and will respond quickly. Once notified of the problem, the rancher maybe able to do something to prevent its recurrence. If you do not know the owner, contact the state board of stock inspection commissioners. Based on a description of the animals, their brands and location, they can provide you with appropriate information.

It is legal to take custody of livestock found trespassing on your property. Keep in mind that when you do so, you become legally responsible for their care and feeding. Within 5 days of taking an animal into custody, you are required to provide its complete description to the nearest authorized brand inspector. The brand inspector can explain your responsibilities and help you deal with the livestock in your custody. The state board of stock inspection commissioners or the brand inspector has the authority to remove stray animals to a safe and practical place within the immediate vicinity during the legal advertising period (35-44-102). According to Colorado law, the livestock owner may be required to pay reasonable charges incurred in the care of the livestock taken into custody (35-44-103).

I have a fence but livestock are still wandering onto my property. What can I do?

Again, contacting the owner to have them removed should be your first step. As noted above, you may also take custody of the animals. Livestock invading fenced property is still not a criminal offense. However, if your property is protected by a "lawful fence" civil recourse is available to you. Colorado law defines a "lawful fence" as:

"...a well constructed three barbed wire fence with substantial posts set at a distance of approximately twenty feet apart, and sufficient to turn ordinary horses and cattle with all gates equally as good as the fence, or any other fence of like efficiency." (35-46-101)

If your fence meets this definition, you may "recover damages for trespass and injury to grass, garden or vegetable products or other crops...from the owner of any livestock which breaks through such fence." (35-46-102)

I have a fence, but it is old and needs repair. Who is responsible for this?

Responsibility for repairing and maintaining fences depends on the location and ownership of the fence. If the fence is built entirely on your property, it is your responsibility to maintain it. If the fence is the boundary between two private pieces of agricultural or grazing property, both landowners share the responsibility for its maintenance. Should your neighbor refuse to participate in its upkeep, you may, after the proper written notice, repair the fence and recover half the cost through civil action. (35-46-112)

If the fence is the boundary between public and private property, the private landowner is responsible for maintaining it to fence out livestock. However, in some circumstances permittees or the federal agency may be interested in sharing the burden.

I really don't like fences because they are not natural and impede wildlife migration. Are there other options?

Fences can be constructed with wildlife needs in mind. Your local Division of Wildlife office can provide you with specifications for wildlife friendly fences.

Livestock are wandering off public land and onto the county road. Who should I call?

If the livestock are an immediate danger to public safety, call the sheriff. A criminal penalty might also be involved since livestock operators may not knowingly allow livestock to graze on lanes, roads, or public highways if there is a lawful fence or other sufficient barrier to keep livestock from reaching the road (35-46-105). You may also contact the state board of livestock commissioners or the local brand inspector.

You may also notify the livestock owner who may not be aware they are escaping and would prefer to protect them. Based on the description of the animals and their brand, the state board of stock inspection commissioners can provide you with the name of the livestock owner in question.

Why doesn't the Bureau of Land Management fence off public lands?

It is the policy of the BLM not to fence public lands from privately owned land. It fences public lands only when land use planning determines that it is in the public interest to do so. In most instances the BLM has determined that it is not in the public interest to construct fences largely because it would be virtually impossible to do so from a practical and economic standpoint. As an example, due to the mixture of public and private land, the Glenwood Springs Resource Area would require about 1,700 miles of boundary fence. At an average of \$2.00/foot, the fence would cost taxpayers \$18 million.

How can the BLM charge trespass fees for livestock that stray onto public lands even if those lands are unfenced?

Federal laws governing public lands require individuals to have a permit authorizing them to graze livestock on public lands. Thus, though the public lands may not be separated from private lands by a fence, individuals who allow their livestock to use those lands without proper authorization are subject to penalties imposed by Federal statutes.

Why isn't the Bureau of Land Management responsible for keeping livestock off of private lands or for making private landowners fence off their own property?

Livestock grazing on public lands are not government property. The permittee leases the privilege to use the area, but remains responsible for the livestock he places there. State and local laws govern trespass onto private lands. The BLM has no authority to enforce state laws on private or state land. There is no federal statute that requires private landowners to fence their property.

Caring For Fences

Under Colorado State statute (35-46-107) it is unlawful to break a fence or open a gate that does not belong to you. This helps livestock owners ensure that they can control their animals.