

# Texas Removal Fence Statute

*Posted on September 17, 2018 by Tiffany Dowell*

Suppose I purchased land in Texas and there was a barbed wire fence on the property line dividing my neighbor's land and my own. Could I remove or replace that boundary fence? If I had fences on my property that attached to that boundary fence, would I be allowed to remove those adjoining fences?



There is actually a Texas statute that provides requirements for a landowner seeking to remove certain fences on his or her own property. The "Removal of Adjoining Fences" statute, Texas Agric. Code Sections 143.121-.123, passed in 1981, governs this issue. Although there have been no reported Texas decisions applying this statute, it is on the books and landowners should be aware of its requirements. You do not want to be caught by surprise.

Under this statute, a person may not remove a fence that is a separating or dividing fence in which the person is a joint owner or that is attached to a fence owned or controlled by another person, absent mutual agreement between the parties. If a person wishes to remove his or her fence that is attached to a fence owned either wholly or partially by another person, the party seeking removal must give written notice to the owner of the attached fence six months prior to removal. Similarly, if a person owns a fence wholly on his or her property, he or she may require the owner of an attached fence to disconnect the attached fence after providing written notice six months before the required disconnection. The removal of a fence without complying with these requirements can result in both civil damages for the value of the fence at the time of removal or criminal prosecution for criminal mischief or reckless damage or destruction.

Unfortunately, knowing who owns or partially owns an old fence can be difficult to determine. Generally, if a fence is on a property line, it is jointly owned by the neighboring landowners. This may change, however, if one landowner paid to build the fence without any assistance from the other landowner. In that case, the boundary fence is likely the property of the builder. Additionally, if a dividing fence is not built on a boundary line, but is instead on the property of one neighbor of another, it is likely that the neighbor on whose property the fence sits is the owner of the fence. Given this potential confusion, parties should err on the side of caution when preparing to remove or replace any boundary fences or those connected to a boundary fence.

Now, back to our example. I would not be permitted to remove the boundary line fence without mutual agreement from the neighbor, as it is likely a jointly owned fence. For the adjoining fences that connect to the boundary line fence, I would have to either obtain mutual agreement or provide written notice to the neighbor six months prior to removal. Lastly, as with nearly all fence law issues, I always recommend a landowner visit with his neighbor and see what can be worked out. Although this statute requires notice six months prior to removal of an attached fence, by visiting with a neighbor and explaining the goals, the parties may be able to reach a mutual agreement that would be much more efficient if removal is desired.