

Legal Alert

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QUESTION: BUT THE HEIFER RAN IN FRONT OF MY CAR, WHY DO I HAVE TO PAY FOR THE DEAD ANIMAL?

ANSWER: IN ARIZONA, YOU CAN BE LIABLE FOR ACCIDENTALLY INJURING LIVESTOCK, AND THE OWNER OF THE LIVESTOCK PROBABLY DOESN'T HAVE A DUTY TO PROTECT YOU FROM THE LIVESTOCK YOU HIT!

Most of Arizona is open range.

Arizona is a "fence out" state, meaning that on open range you need to build a "lawful fence" if you want to keep wandering livestock off your property. The owner of the livestock is not required to "fence it in" in most of the state.

So where do I not need a fence to keep livestock out?

Start with do you live in an incorporated city or town? Arizona Revised Statute § 3-1429 says that the state's fence laws don't "affect any ordinance of an incorporated city or town relating to stock running at large in the incorporated city or town...." Keep in mind there are many unincorporated "county islands" within the boundaries of incorporated cities or towns, however.

So the first place to look is at city or town ordinances about stock running at large.

If you are not in an incorporated city or town, you must then determine whether you are in a "no-fence district" as defined in A.R.S. § 3-1421. In larger irrigation districts or areas of at least 20,000 acres where 75% of the acreage is irrigated the voters can petition to be designated a "no-fence district." No-fence districts can also be established on contiguous bodies of land of at least 1,000 acres adjoining the limits of an incorporated city or town with 30,000 people or more. Such districts cannot extend more than 12 miles in one direction past the city limits, however.

In such areas, the majority of taxpayers can petition the Board of Supervisors of the County to form a no-fence district for the land in question. Once the petition is filed, the Board of Supervisors records it in the records giving notice that the no-fence district has been formed.

If your property is in a no-fence district, the livestock owner is liable for property damage caused by strays. The law is different in most of the state where it is open range, however.

Don't fence me in!

Outside of municipalities and no-fence districts, you need to fence out unwanted livestock. You need to be aware of the rules, because a lot of residential and business development is on the "open range."

To keep wandering livestock off your property you need a "lawful fence." A lawful fence needs:

- a. Posts spaced no more than 30 feet apart;
- b. At least four strands of tightly stretched barbed wire; and
- c. Barbed wire must be secured to posts so that the top wire is 50 inches above the ground and the other barbed wire strands are at 38 inches, 28 inches and 18 inches above the ground.

Arizona Revised Statute § 3-1426 further states:

If the posts are set more than one rod apart, the wire shall be supported by stays placed not more than seven and one-half feet from each other or from the posts, extending from the top wire of the fence to the ground....

If you have a "lawful fence" and livestock breaks through the fence and damages your property, you are entitled to damages from the owner of the livestock. If you do not have a "lawful fence" you cannot recover for damages from trespassing animals on the open range.

If you kill or injure livestock on the open range, whether by accident or not, you are liable to the livestock owner for the damages. If that horse ran across the road in front of you and you hit it, you have no claims against the owner of the horse for the damages to your vehicle or your injuries. *Parrish v. Goff*, 640 P.2d 869 (Ariz.App. 1981). Instead, you owe the horse owner for killing or injuring the horse.

Can you hear Gene Autry singing as you ride into the sunset?

Oh, give me land, lots of land under starry skies above
Don't fence me in
Let me ride through the wide open country that I love
Don't fence me in...

I want to ride to the ridge where the west commences
And gaze at the moon till I lose my senses
And I can't look at hobbles and I can't stand fences
Don't fence me in

Don't Fence Me In, original poem by Bob Fletcher and composed by Cole Porter. (Bob Fletcher was an engineer with the Department of Highways in Helena, Montana.)

If you need to know the fence laws in another state, they are compiled by the National Agricultural Law Center at the University of Arkansas at www.NationalAgLawCenter.org. Let me know if you have any questions about stray "livestock, bison or ratites." A.R.S. § 3-1401, et seq.

