

AGRICULTURE LAW

Frequently Asked Questions

Office of Attorney General

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ORAL LEASES

What are my rights if I rent farmland but do not have a written lease?

South Dakota law allows for oral leases for any size farm. The leases run from year to year. The law includes specific provisions regarding oral leases for rental of farms that are 40 acres or more. By law, the oral agreement is a year to year lease. It automatically renews from year to year under the same terms. The landlord must give notice on or before September 1 in order to terminate the lease or it will be automatically renewed. If the notice is timely, the tenancy terminates by law on March 1. However, if the tenant defaults (by failing to pay the agreed upon share of the crops, for example), then the landlord may give written notice later than September 1 and still terminate the lease.

Source: SDCL 43-32-22.1; SDCL 43-22-5, 43-32-5

You cannot rent farmland under an oral lease for more than one year at a time. South Dakota law specifically requires that longer-term leases must be in writing.

Source: SDCL 43-32-5; SDCL 53-8-2

When dealing with a written lease, the situation changes. Your rights are set out in the written lease itself. That document may give you more rights or fewer rights.

I heard the written notice law changed recently. What is the change?

The law used to require that written notice be given by November 1. In 1994, it was changed to September 1.

FENCING LAWS

Do adjoining land owners that both use a fence between their property still share the expense of maintaining a fence on the property line?

Yes, this law has been in place since 1877. The familiar longstanding law is that unless adjoining landowners agree otherwise, every owner of land is liable for one-half the cost of erecting and maintaining the fence. The landowner is responsible for the half of the fence on his right when he stands on his own land and faces the line where the fence would be.

Source: SDCL 43-23-1; SDCL 43-23-2

What is a “legal fence”?

South Dakota law states that any fence upon which owners of such adjoining lands may agree shall be a legal fence.

Source: SDCL 43-23-3

Unless the adjoining landowners agree otherwise, they are obligated to construct a “legal partition fence” which has at least four strands of barbed wire spaced at 18”, 28”, 38” and 48” from the ground respectively. The posts are to be constructed and spaced as follows:

* Wood posts at least 6 ½ feet long and 4 inches in diameter, with the posts firmly set at least 2 feet in the earth and not over 30 feet apart.

* Concrete posts 6 feet or more in length having a diameter of no less than 4” and having ¼” rebar rod through the entire post, with the posts firmly set and not over 30 feet apart.

* Steel posts not less than 5 ½ feet in length, with the posts firmly set at least seventeen inches in the earth and not over 20 feet apart.

* Such posts shall be firmly braced at ends, corners and gateways or openings.

Source: SDCL 43-23-3; SDCL 43-23-4

I heard there were changes to this fencing law. Is that true?

Yes, there are two changes during the last several years.

First, the law was changed in 1988 to address situations when livestock is not being kept on the land. Unless adjoining landowners otherwise agree, every owner of land shall be liable for one-half of the expense of erecting and maintaining a partition fence between his own and adjoining lands. However, no owner of land is liable for such expense if neither derives any other substantial benefit from the fence for a period of five years from the date of erection or repair of the fence.

Second, the “**buffalo fence**” law was enacted in 2001. A legal fence for buffalo may have smooth wire instead of barbwire. All posts must be at least 54” above the ground, and a fifth strand of wire is to be added at the 54” height. The owner of the buffalo stands the expense for the added fence, unless both parties have buffalo.

Source: SDCL 43-23-4.1

OPEN RANGE LAWS

Does South Dakota have an open range law?

For many years, certain portions of South Dakota were designated as “open range.” Those specific laws allowed for cattle to range without fences. Those laws were fully repealed in 1980.

I hear the term “open range” used in connection with motor vehicle accidents. Is that something different?

Although there are no longer specific designated “open range” areas in South Dakota, the term “open range” still has meaning. The term comes up in describing the liability between motorists and livestock owners in motor vehicle/livestock collisions occurring on the roads.

For this purpose, the term “open range,” means “an area in which livestock are kept at large, unrestrained and unattended.”

Source: Eixenberger v. Belle Fourche Livestock Exchange, 58 NW 2d 235(1953)

The owner of a domestic animal is not “liable for damages for an injury resulting from its being so at large unless he has knowledge of vicious propensities of the animal or unless he should reasonably have anticipated that injury would result from its being so at large on the highway.” Courts look to the facts of each case and consider “[t]he character of the road, the kind of traffic thereon, the time of day, and all other pertinent facts and the surrounding conditions” to determine whether the farmer or rancher “should have reasonably anticipated the danger.”

Source: Eixenberger v. Belle Fourche Livestock Exchange; Estate of Schuck v. Perkins County 1998 SD 32; 557 NW2d 584

The issue of whether the farmer or rancher is liable for damages caused by cattle on the road is dependent on the type of road, the kind of traffic, and whether the farmer or rancher knew the livestock were likely to be on the road.

Source: Adkins v. Stratmeyer 1999 SD 131, 600 NW2d 891; Eixenberger v. Belle Fourche Livestock Exchange

WEED LAWS

What is the landowner’s responsibility for controlling weeds, brush, and trees, in the township right of ways?

Landowners or occupants of land adjoining or abutting township roads must “cut, remove or destroy grass, weeds, trees, and brush” within the right of ways along township roads.

Source: SDCL 31-31-2; Johnson v. Marion Township 2002 SD 35, 642 NW2d 183

The landowner or occupant is to cut, remove, or destroy the grass, weeds, trees or brush between September 1 and October 1 of each year (or between dates annually fixed by the township board). If the landowner refuses, the township has authority to hire it done.

Source: SDCL 31-31-3; SDCL 31-31-5; SDCL 38-22-22

The township may vote at its next annual township election on whether to pay for mowing or cutting trees out of its budget or whether to require the landowner to pay. The township has authority to recapture the cost of cutting and removing weeds, trees and brush on or in the right-of-way. The costs are collected from the landowner as other taxes.

Source: SDCL 31-31-5; SDCL 31-31-6

Is the law different if “noxious” weeds are involved?

The South Dakota Weed and Pest Commission publish a list of state weeds and pests. That list includes weeds “which have been found to be detrimental to the production of crops or livestock or to the welfare of persons residing within the state” and which are “sufficiently detrimental to warrant enforcement of control measures.” This “noxious weed list” includes, for example, Canada thistle and leafy spurge. If weeds on this list are involved, the governmental agency in charge of this right of way (township, county, or state) is responsible for the cost of controlling the weeds. Still, the landowner is responsible for the removal of grass, non-noxious weeds, trees, and brush from the right-of-way as described above.

Source: SDCL 38-22-1.2 (11); SDCL 38-22-9; SDCL 38-22-22; SDCL 38-22-22.1, ARSD ch. 12:62; 76 AGR 1

Note: A full list of noxious weeds is available from your county agent or the South Dakota Department of Agriculture.

Is it true that my neighbor can sue me for allowing noxious weeds to spread from my property to his adjoining property?

Yes, a law enacted in 2000 provides that “if an infestation of noxious weeds or an infestation of mountain pine beetle spreads to adjacent private or public land, the person or entity owning the property from which the infestation spread is responsible for remedying the problems caused by the infestation, to the extent that the person or entity is responsible for allowing the infestation to spread to the adjacent private or public land.”

Source: 36-22-16.2; Collins v. Barker, 2003 SD 100, 668 NW2nd 548

MOWING ROAD DITCHES OR HIGHWAY RIGHT-OF-WAYS

I heard there was a change in the dates when road ditches or right-of-ways could be moved. Is this true?

No. The east river date mowing of state right-of-way can begin, remains July 10. The west river date mowing of state right-of-way can begin, remains June 15. However, the June 15 starting date restriction was eliminated for all west river counties except Gregory, Tripp and Lyman. Stated reason for the change was to protect wildlife populations, especially pheasants which nest and brood in highway ditches, while at the same time accommodating landowners who want to hay the ditches while the grass is still good in low-pheasant population areas.

The new rules do not require a permit from the Department of Transportation to mow state highway ditches, except for interstate ditches. All medians on divided highways are mowed only by contract with the Department of Transportation.

Source: SDCL 31-5-22; DOT Rule 70:04:06

What roads does this new rule apply to?

This new rule applies to all roads designated by the legislature in SDCL 31-4 as belonging to the State Trunk Highway System. The State Trunk Highway System includes all roads under the state’s supervision and maintenance – state highways, U.S. highways and interstate highways. It does not include county or township roads. County and township roads may have separate requirements for right of ways. If in doubt, the County Highway Superintendent should be consulted.

Is there a penalty for violating these new mowing rules?

Yes. Violation of this rule is a Class 2 Misdemeanor which carries a penalty of thirty days imprisonment in the county jail or two hundred dollar fine, or both.

Source: SDCL 31-5-22

If you have any questions concerning the status of your ditches or rights-of-ways contact your local county highway superintendent.

The information provided here is general in nature. If you have specific questions, you need to consult with your own private lawyer. There may be exceptions that apply to any of these situations.

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