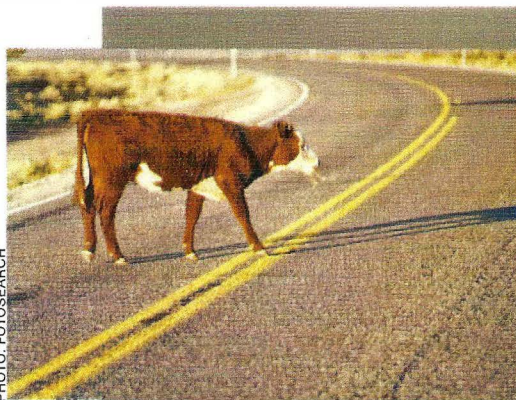


PHOTO: FOTORESEARCH



We have fenced pasture with highway frontage in Mississippi. We're thinking about renting the land to someone with cattle, but we're worried about who will be at fault should the cattle get out onto the highway and cause an accident. Do we have the liability as the landowners, or does the person who owns the cattle? One of the conditions of renting would be that the fences must be

maintained by the renters. Is this enough to protect us?

In Mississippi, as in many other states, the liability for escaped livestock is placed on the livestock owner or controller. As landlord you do not have an ownership in the cattle or control over their care. The tenant then has the primary liability for any damages caused by escaped cattle.

That said, highway accidents carry a high risk of injury or death. And when the stakes are this high, the injured party may try to sue you to increase the financial recovery—especially if your tenant has few assets and/or no insurance.

Because you built the fence, you could face some liability if the fence is shown defective for containing cattle. I would suggest that in addition to the lease provisions you: 1) require the tenant to purchase and maintain substantial personal and property insurance covering animal highway accidents; and 2) carry your own property insurance.

—Robert P. Achenbach/Agricultural Law Digest

I own land that has a small landlocked, undeveloped wooded tract behind it. There is a small gravel road down the edge of my property where my neighbor accesses his tract. I maintain the road so I can travel across it with my farm machinery. I'm worried that when this landowner has a timber company come in and harvest they will destroy the road with their tracks and machinery. How can I make sure they will be required to repair any damage? Should they be required to post a bond? Do I deal with the timber company or with my neighbor?

Your neighbor likely has the right to remove the timber from his own land. But it is his personal responsibility to compensate for damage occurring while exercising that right. In addition, if the timber company travels on your land outside the easement (road), it has likely committed a trespass that could entitle you to damage.

Your neighbor effectively holds an "easement by necessity" that means you must allow him to pass through your land over this road. The use of that easement, however, is limited in terms of how it may be used. If the easement is being overused—or trespasses are resulting in harm—it may be possible to obtain an injunction.

That injunction would prevent the overuse and trespass. Monetary damages can be awarded if the overuse has already occurred.

It might save you time and money to reach a written agreement with the timber company and your neighbor before any work begins. A competent attorney, licensed in your state, should be able to help you write up this agreement. —Eric Pendergrass/Smith, Maurras, Cohen, Redd & Horan



PHOTO: JUPITERIMAGES/LIQUIDLIBRARY

I'm a row-crop farmer whose farm used to be miles away from any houses, but times have changed. Now it's a constant challenge to work with neighbors and produce a crop. I'm especially worried about my liability when it comes to chemical drift. If I hire a custom applicator to do all my spraying, does that mean I'm not responsible if there is drift which in some way damages my neighbor's property?

In my opinion you still have a potential liability, as though you had negligently applied the chemical yourself. That said, if you were sued you should be able to turn around and sue the applicator for negligence and for indemnity (to make you whole).

Make sure the applicator you use has property liability insurance to cover any potential damages that could be foreseen from negligent applications. Also make sure you have adequate liability insurance in case you're sued.

—C. Dan Campbell/Brooks & Campbell

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