

# What is a Fence & where can I install one?

**Rhode Island General Laws Title 34 Property, Chapter 34, §34-10 has more details which may apply to your fence questions. Questions about where a fence can go for your swimming pool? Click on this [link for the States 2018 Swimming Pool & Spa Code](#). Notice: As with all legal matters, if you have a fence location dispute, your individual situation may require a real estate attorney for specific resolution. We can offer no legal guidance.**

## So, What IS a fence, anyway?

(§34-10-1) Rhode Island law defines in detail just what a fence is. These definitions are slightly different from what the State Swimming Pool Code says a fence can be. That is because a swimming pool or spa fence is intended specifically to be a barrier against unwanted, unauthorized, or otherwise restricted access to a water containing vessel. That is why the Swimming Pool & Spa Code uses the defined word “Barrier” not fence. State law says a fence is lawfully a fence when it is of a height and meets the description of any one or combination of the following seven (7) things:

- (1) A hedge with a ditch shall be three feet (3') high upon the bank of the ditch, well staked, at the distance of two feet and a half (2 1/2'), bound together at the top and sufficiently filled to prevent small stock from creeping through; and the bank of the ditch shall not be less than one foot (1') above the surface of the ground.
- (2) A hedge without a ditch shall be four feet (4') high, staked, bound and filled, as a hedge with a ditch.
- (3) A post-and-rail fence on the bank of a ditch shall be four (4) rails high, each well set in posts, and not less than four feet and a half (4 1/2') high.
- (4) A stone wall fence shall be four feet (4') high, with a flat stone hanging over the top thereof or a good rail or pole thereon, well staked or secured with crotches or posts.
- (5) A stone wall without flat stones, rails or posts on the top, shall be four feet and a half (4 1/2') high.
- (6) A woven wire fence of wire not less than number nine, firmly fastened to posts not more than sixteen feet (16') apart, constructed of not less than eleven (11) horizontal wires, the top wire not less than fifty-four inches (54") from the ground, the bottom wire not more than two inches (2") from the ground and with stays or uprights not more than six inches (6") apart.
- (7) All other kinds of fences not herein particularly described shall be four feet and a half (4 1/2') high.

## What if I want to put up a barbed wire fence?

(§ 34-10-2) If you want to put up a barbed wire fence you cannot do so on your own. There **MUST be written consent from both you and the person who owns the land on the other side of that barbed wire fence.** After you both agree to have a barbed wire line fence, that line fence needs to be located on the property line. Consent of adjoining owner to barbed-wire fence.

### **Okay, okay. So where can I put my fence?**

(§34-10-9) First thing to understand is that if you don't put that fence on the dividing line that establishes the land you own from someone else's, it's just a yard decoration. It's not a fence unless it is placed as a partition and located on the property line with one half of the fence width on the land of each adjoining proprietor. To know where that is located, you will need a Land Survey (AKA Plot Plan). We recommend your Survey be better than the mortgage plan when you passed papers to buy your land and home. For more on what a Plot Plan is search the Building Department page for "What's a Plot Plan". Once the fence is up, and in order for it to remain a lawful fence, it must be maintained and in good order at all times throughout the year unless the parties concerned agree otherwise.

### **I think my neighbor put that fence up just to make me mad. What do I do?**

(§34-10-20) Some people call a fence put up to annoy the neighbor a spite fence. If you believe you have a spite fence, the law says the fence needs to be unnecessarily taller than six feet (6') in height and maliciously erected or maintained for the purpose of annoying you. So if that seems to be your situation, you will need to seek legal counsel so that a court of law may review the situation. It is only within the jurisdiction of the legal court system a fence can be affirmed as a private nuisance and if injury has been established either in the comfort or enjoyment of your estate. If that happens, you may have an action to recover damages for the injury.