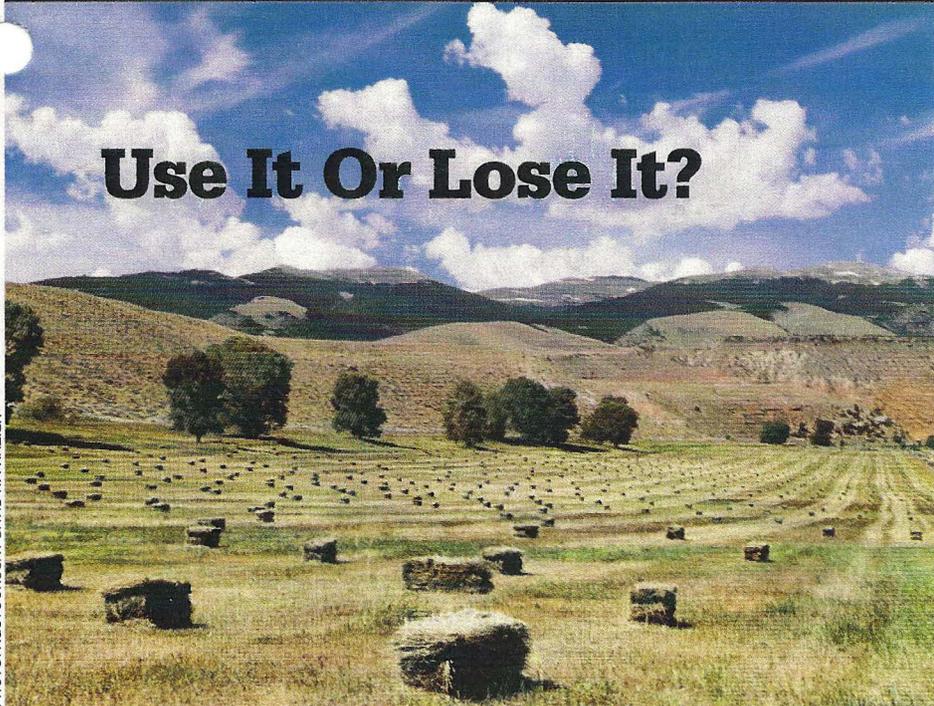




Use It Or Lose It?

PHOTO: AGSTOCKUSA / DAVID R. FRAZIER



We bought farmland in Mississippi a few years back—mostly hay fields. In one field there is a 4-acre corner that is fenced off from the rest of the field. This corner was originally part of our field, but the survey shows it is owned by our neighbor. The area is completely cut off from the rest of the neighbor's property by a creek and is overgrown. We feel our neighbor has abandoned this portion of his property due to lack of accessibility. Since we have access to these 4 acres can we clean up the corner, incorporate it back into our fields and start cutting hay on it? Would this lay the groundwork for adverse possession?

Yes, continually using the 4-acre field for hay production over the statutory period (10 years in Mississippi) without permission may entitle you to bring a quiet title action to have title to the parcel changed to your name.

However, you should consider the cost of the court action, attorney fees and time for this quiet title action.

The court may not even grant title to you because you are aware of the proper title. There's also the uncertainty each year of planting a crop, working the land and then having your neighbor bring a trespass action against you.

Adverse possession requires you have a reasonable claim or belief that the contested property is yours.

Weigh all these costs against simply offering to buy the 4 acres, or exchange it for property with your neighbor: If this neighbor truly has no interest in the property he may take a low price, and you'll have a peaceful and profitable coexistence.

—Robert P. Achenbach/
Agricultural Law Digest

We are being sued for an easement across our land. The people bringing this suit claim they have a right by necessity. Yet they have been using a road over their own land for the past five years. We think this is a family matter, where part of the land is going to one family member and part to another. We feel that they have no right by necessity to our land and need to work it out among themselves. Do we have any rights in this matter?

In order for an easement by necessity to arise in Texas, there are three requirements:

1. There must be unity of ownership by the dominant estate (the neighbor) and the servient estate (you).
2. The roadway must be a necessity and not merely

a convenience for your neighbor.

3. There must have been a necessity existing at the time of the severance of both the dominant and servient estate.

Based on your question, it appears the neighbor would not have a legal basis for establishing an easement by necessity because there never was a single tract of land that has been severed as between you and the neighbor; hence this would not meet the unity of ownership requirement.

Laws vary from state to state, and it's necessary to confer with an attorney in your state to develop the facts and applicable law where the land is located.

—C. Dan Campbell/Brooks & Campbell

Nothing contained herein should be construed as legal advice. The information provided is general only and should not be taken as the law in your particular jurisdiction. Any individual having questions concerning the status of or requirements under the law for any specific situation should consult a competent attorney. Subscription to *The Progressive Farmer* magazine does not create an attorney-client relationship.

Write to Law of the Land, 2204 Lakeshore Dr., Suite 415, Birmingham, AL 35209 or e-mail vmyers@progressivefarmer.com.