

## When An Easement Hurts

**In 1995 my father deeded some Alabama acreage to my husband and me. At the time we did not know that in 1954 he had allowed an easement to be put on the land, allowing the use of water from a natural spring by another property owner. Our deed does not mention this easement and my dad is deceased. The holder of this easement now has a herd of donkeys and ponies he lets into the spring; he only had a bull and a few cows back when the easement was created. These animals are destroying the banks, creating a huge erosion problem. We are not against**

**the use of the water for the animals, but we don't want them getting into the stream, destroying the banks and killing the trees. What recourse do we have?**

Your situation has a good number of issues that will require legal advice if you cannot negotiate a reasonable solution with the easement holder.

The main question concerns the terms of the easement. Although your neighbor has access to the water, the easement may not set forth the terms of how that water may be used (for example, just for cattle or for any livestock) or even how much water may be used. The use of the spring for donkeys and ponies may exceed the easement's allowance.

The owner of an easement has the duty to use the property covered by the easement with reasonable care for preserving the property. The cattle did some damage, and that damage apparently was allowed under the easement.

If the donkeys and ponies are doing more damage, that may exceed the terms of the easement, and the easement holder should pay damages for either the loss of value of the land or the cost of repairs.

If the easement holder refuses to take steps to avoid excessive damage, a court injunction could be obtained to prevent the excessive damage.

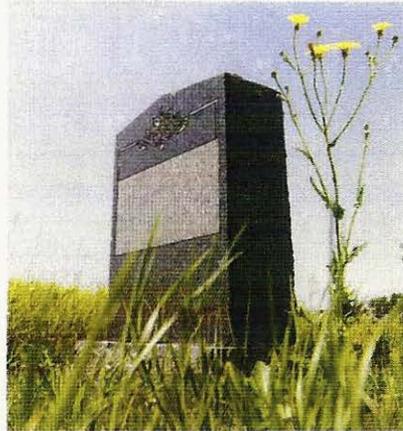
—Robert P. Achenbach/Agricultural Law Digest

**There are three gravesites on our farm in Tennessee that were there when we bought the place more than 50 years ago. We have never seen or been contacted by the family. We want to know if we have legal obligations to provide access, and if there is some legal process we could go through to have the bodies moved to a cemetery.**

Relatives of a family member buried in a cemetery plot have the following rights: the right of visitation, the right to decorate the grave and the right to protect it from desecration.

If the cemetery is on privately owned land, these rights nevertheless exist for the family, and the owners of the land have a legal obligation to provide

PHOTO: SASSYSTOCK



some sort of reasonable access to the gravesites.

Does the fact that a cemetery has not had visitors for 50 years constitute an "abandonment"? The general rule

is that no abandonment takes place as long as the land is kept and preserved as a resting place for the dead with something to indicate the existence of graves or as long as it is known and recognized by the public as a graveyard.

Given the length of time and the lack of activity by family members, it's possible you could file a lawsuit in the county where the land is located to have the cemetery declared abandoned. There would have to be a court order decreeing the cemetery abandoned and authorizing the removal of bodies to another cemetery. To find out what rights you as the property owner have, you will need to consult with an attorney in your state.

—C. Dan Campbell  
Brooks & Campbell

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