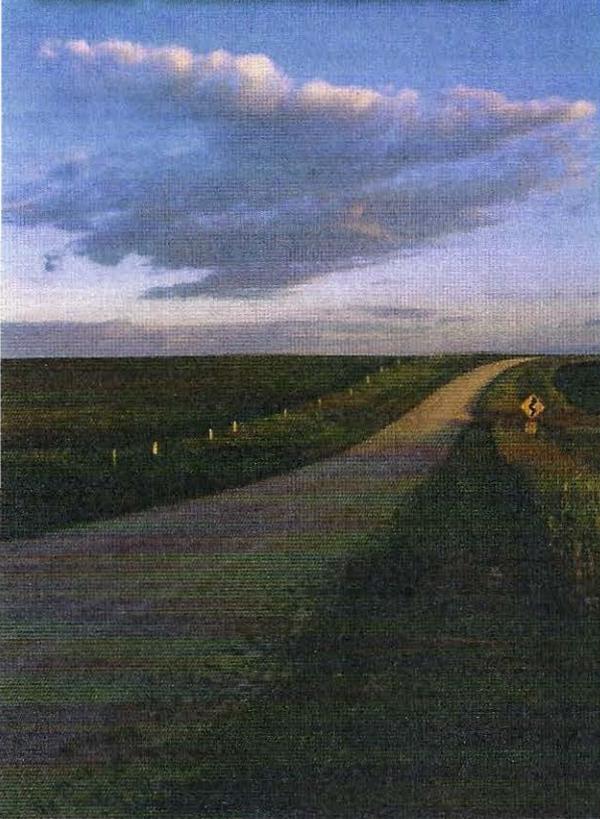


# Giving Up An Easement



We relied on an easement to access our land in Texas, but last summer we bought a section of property that adjoins ours and has road frontage. We no longer need the easement—it is along the outside perimeter of our land. Can we legally give up the easement or do we have to continue to maintain it?

Under Texas law there are two types of easements:

- ▶ an “easement in gross,” recognized as an interest in land that is attached to a person but not attached to the land itself;
- ▶ an “easement appurtenant,” meaning it is a right that is attached to the land and passes with the land if it is sold, etc.

Assuming the easement in question is an “easement appurtenant”—which is generally the case where the easement provides for a right of “exit and entrance”—an attorney would need to examine the document that created the easement to determine if you had undertaken to maintain the easement and your responsibilities thereunder.

As a general rule, the holder of an “easement appurtenant” has the right to make repairs or do work necessary to the proper use and enjoyment of the easement, but not the duty to make such repairs. Assuming no obligation to maintain the easement, you could simply quit using the easement without doing anything further in terms of making repairs, etc.

You could execute a document, such as a quit claim deed, renouncing the easement in favor of the owner of the underlying property, though you might later regret that decision if the land you own was partitioned and the new owner needed that easement.

—D. Dan Campbell/Brooks & Campbell

**My husband has been trying to convince me that we need to change our property description to “agricultural” because we would get a cut on our property taxes. We have a small acreage in rural Tennessee and the nearest working farm is 10 miles away. How would being classified “agricultural” help on our taxes, and what does it normally take to qualify?**

Many states provide for lower real property tax rates for agricultural land. In many cases, the land is valued for tax purposes only by its income-producing capability rather than its value as land and buildings. For farms located near urban areas, the land would otherwise have city-sized taxes because of the subdivision value of the land.

Something like the production of a few chicken eggs for sale would not qualify land for special tax assessment as agricultural land. However, it is not required that one have a major

farm or ranch operation either. Each state has specific requirements for its special agricultural assessments. Some states require the land to be zoned agricultural, while others merely require agricultural use of most of the property. In most cases, you will need the land to be primarily dedicated to farm or ranch use in the production of crops, livestock or animal products.

Contact your county tax assessor office for guidance in meeting the agricultural valuation requirements in your specific situation. It never hurts to ask, and there may be some county interest in preserving rural land that could work in your favor. But be aware that some state laws specify that if agricultural use land receives the special assessment rate and later is converted to non-agricultural use, the landowner may be required to pay additional taxes or some penalty.

—Robert P. Achenbach/Agricultural Law Digest

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 [law@progressivefarmer.com](mailto:law@progressivefarmer.com).