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Should you buy property without legal access?

By Curtis Seltzer  
LandThink contributor

I learned this week about 150 acres that was priced at about \$300/A. It seems to have a lot of merchantable timber, more than enough to cover the cost of acquisition. But I haven't had a chance yet to confirm that prospect. It did have two problems.

First, it came burdened with a conservation easement that prohibited any residential construction. I could live with that in a timberland investment. Second, however, was disclosure that it had no legal access. Is being landlocked a deal-killer?

Well, like so many other things, it depends on the particulars. These no-access deals can be winners or absolute disasters. Only thorough research before submitting a contract will show you where on that continuum you're likely to land—and even then it can be chancy.

The buyer looking at such a property needs to involve in the pre-offer scoping stage a local real-estate lawyer whose judgment he trusts. You need to be convinced that your claim for an easement will prevail. I'd stop pursuing a property if my lawyer told me the odds in court were 80-20 in my favor—not good enough. Losing this type of case means that you are out the legal costs, still landlocked and probably unable to sell.

On the other hand, I've bought landlocked property in another state, negotiated an access easement with the neighbor and made a good profit on the sale of the timber and land. I made sure to get the easement agreement worked out on paper before making the purchase. An access contingency might also be used. Had the adjoining owners not been receptive to my offer, I would not have bought that property. I had no interest in getting into a fight with them.

The general principle in real-estate law is that private property cannot be landlocked, that is, denied reasonable vehicular access from a public road. But states and their courts differ in how this principle is interpreted, and several situations can exist that modify the rule. Things can also get complicated when you are seeking an easement over public land or land that is improved or occupied.

The landlocked party can bring suit against one or more neighbors claiming a right to obtain an access easement by necessity. A court will decide which neighbor (s), if any, should be burdened with this easement, usually by looking back through the deeds to determine the origin of the landlocked tract. An easement would typically be granted over the property from which it came. There are, however, always exceptions.

The landlocked party does not have a right to force an easement over his most convenient route to his property. The easement awarded in court should be that route most justified by the property's history, which may or may not be the cheapest or easiest for the landlocked owner.

Pre-purchase scoping of the particulars is essential. The lack of an easement may indicate a long-standing dispute between adjoining property owners. This may be a matter of personalities, or it might indicate an absolute refusal by one or more landowners to sell an easement at a fair price to anyone. I've run into a situation where the neighbors refused to sell an easement as a tactic to force the landlocked party to sell his parcel to them at a steep discount. The lack of access may also suggest a thorny legal war that needs to be fought, but no one ever wanted to fight it.

Still, you may find that the adjoining neighbor will sell an easement to you, but not to the current owner. That's an opportunity.

The buyer has leverage over the adjoining landowner to the extent that the law will award him the easement if he seeks it in a lawsuit. If everyone agrees that the buyer will win in court, why would an adjoining owner go to the expense of a losing lawsuit? All I can say is that individuals do not always act on what is their obvious economic interest. I've seen both anger and pride trump logic and money.

If you and your lawyer are convinced that the court will rule in your favor, I'd approach the landowner through your lawyer to see whether an easement can be obtained without a fight. Make sure that the easement is sufficiently wide for your purposes; and figure out who is responsible for its maintenance.

The buyer needs to pencil out a couple of different scenarios before submitting a contract to the seller of a landlocked tract:

Easy Resolution. Easement is purchased for \$X; easement is developed for \$Y.

Skirmished Resolution. Adjoining landowner resists, but ultimately settles. Add in lawyer's fees.

Lawsuit. This can get very expensive. You may not get the easement you want.

Any deal that predictably involves an unpredictable lawsuit is one I would avoid. The Easy Resolution is likely to be profitable, since you will be getting the parcel at a discount.

And the Skirmished Resolution...well, that's a deal that just depends.