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CORNHUSKER ECONOMICS

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University of Nebraska–Lincoln Extension

Institute of Agriculture & Natural Resources
Department of Agricultural Economics
<http://agecon.unl.edu/cornhuskereconomics>

Nebraska Isolated Lands Statutes

Nebraska statutes establish a procedure for owners of land that does not have access to a public road, to have the county build an access road at the landlocked landowner's expense. These statutes are called the Isolated Lands Statutes (NRS §§ 39-1713 to -1719). The process to provide access to isolated lands is not simple, and probably costly. **The best way to avoid these situations is to make sure your land has access to a public road before you buy it.** This newsletter provides a general overview of the isolated lands statutes. If you have questions regarding the isolated lands statutes, contact an attorney.

Most landowners assume that if they don't have direct access to a public road they can gain this access by going to court. In most cases this is incorrect. If you used to own the access road, and sold the land containing the road and failed to retain the right to continue to use the access road, Nebraska courts have recognized your right to continue to use the access road. This is called an **implied easement of necessity**. *Johnson v. Mays*, 216 Neb. 890 (1984). But if you **bought** land with no access to a public road, you can't get that access by going to court. In Nebraska, your only option (besides getting the neighbor to allow you to use his/her private road for access), is provided in the isolated lands statutes.

If you have isolated lands (and didn't sell the access road to the neighbor), your first step is to attempt to obtain or purchase an easement to go across your neighbor's land, in order to have access to a public road. If you obtain such an easement or right of way, it should be recorded with the county real estate records. You should retain an attorney to make sure the proper legal procedure is followed.

If you are unsuccessful in obtaining a right of way across the neighbor's land, you may then request that

Market Report	Yr Ago	4 Wks Ago	9/30/11
<u>Livestock and Products,</u>			
<u>Weekly Average</u>			
Nebraska Slaughter Steers, 35-65% Choice, Live Weight.	\$96.48	\$114.00	\$120.14
Nebraska Feeder Steers, Med. & Large Frame, 550-600 lb.	123.51	161.95	152.32
Nebraska Feeder Steers, Med. & Large Frame 750-800 lb.	110.07	131.78	138.77
Choice Boxed Beef, 600-750 lb. Carcass.	156.27	183.22	183.19
Western Corn Belt Base Hog Price Carcass, Negotiated.	76.64	82.06	89.25
Pork Carcass Cutout, 185 lb. Carcass, 51-52% Lean.	88.43	97.02	97.83
Slaughter Lambs, Ch. & Pr., Heavy, Wooled, South Dakota, Direct.	142.12	184.87	174.25
National Carcass Lamb Cutout, FOB.	329.95	406.99	409.37
<u>Crops,</u>			
<u>Daily Spot Prices</u>			
Wheat, No. 1, H.W. Imperial, bu.	5.20	7.67	5.91
Corn, No. 2, Yellow Omaha, bu.	4.11	7.48	5.83
Soybeans, No. 1, Yellow Omaha, bu.	10.05	14.11	11.14
Grain Sorghum, No. 2, Yellow Dorchester, cwt.	7.25	12.39	9.66
Oats, No. 2, Heavy Minneapolis, MN , bu.	3.28	3.84	3.45
<u>Feed</u>			
Alfalfa, Large Square Bales, Good to Premium, RFV 160-185 Northeast Nebraska, ton.	*	185.00	185.00
Alfalfa, Large Rounds, Good Platte Valley, ton.	*	117.50	140.00
Grass Hay, Large Rounds, Good Nebraska, ton.	75.00	85.00	92.50
Dried Distillers Grains, 10% Moisture, Nebraska Average.	127.50	209.00	202.50
Wet Distillers Grains, 65-70% Moisture, Nebraska Average.	47.00	110.25	69.50
*No Market			



the county establish an access road, for which you would be required to pay the entire cost. To begin this process you file an affidavit with the County Board containing the following:

- a statement that you own land within the county, and providing the land's legal description;
- a statement that the land is shut-off from all public access (other than a waterway), by being surrounded on all sides by land belonging to other persons, or by such real estate and water;
- that you are unable to purchase a right of way from any of your neighbors, or that the only price you can obtain is exorbitant, and the amount of that exorbitant price, and;
- requesting the county to provide public access pursuant to the isolated lands statutes.

To consider whether the provision of access is required, the County Board must determine that all the facts contained in the affidavit are correct. In addition, the board must also determine whether there is private access to the public road, and whether that private road is less than two rods (33 feet) in width. If so, the board must hold a hearing on the request within 30 days of its submission, after ten days public notice and 15 days written notice to the affected landowners.

After the hearing the board determines:

- whether the conditions asserted in the petition are true, and that the only access (if any) is by way of a private road less than 33 feet in width;
- whether the isolated land was not isolated when it was purchased;
- whether the isolation of the land was not caused by the landowner or by anyone else with the landowner's knowledge and consent;
- that access is necessary to use the isolated land, and;
- that the number of persons served justify providing public access.

If the answer to all these questions is yes, then the board must proceed to provide an access road of between 33-66 feet in width. The County Board must determine the damages to be paid to the landowner through which the access road will be built, and the isolated landowner must pay the full costs of developing the access road (including the damages to the neighboring landowner), before the access road is built. The county is not responsible for access road maintenance unless the access road is a public road. Whenever possible, access roads shall be located along section lines.

As you can see, this is not a simple process. Your best bet is to try to work something out with a neighbor to give you access to a public road. The isolated lands process is clearly something that should be attempted only as a last resort, when all other options have failed.

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