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Q: My parents owned land for 40 years. On the property was a home and a well for water. The property was sold, but the well did not go with the property. Later the property was sold again and everybody knew that the well did not go with the land.

Eventually the property was lost to the bank; the bank president was informed the well did not go with the property. The bank sent out an agreement for the well to be signed by my family. We signed the document, but the bank did nothing with it. The bank is now claiming the well.

There is documentation showing that we used the well and maintained it for over 40 years. Now bank has given us until the 1st to either purchase the property or stop using the well. What rights do we have to the well. Do we have any adverse possession rights?

A: Your question brings up a whole range of issues relating to land ownership and water rights. It will be very hard to address your issues in any detail in the space of this column. Also, we have to make some assumptions based on your question that may not be correct.

The most basic assumption is that the well is located on land that is not owned by your parents but is adjacent to other land they own or live on. In other words, to get the water, the water must travel up a well located on the original property, then travel by pipe across your neighbor's land to your home. Furthermore, the electric power for the well may come from your land and travel over the same area as the water supply pipe down the well to supply power to the pump at the bottom of the well.

If we were to do that today, we'd need to go to your neighbor and ask them for an easement over their land to drill the well, along with an easement over a strip of land going from the well to our land to supply the well with power and bring the water back to our land.

That brings us to our first question: Do you have any documentation from 40-odd years ago giving you the right to put the well in and to use a portion of the land to supply your property with the water forever? Wells can be expensive to install along with the other infrastructure needed to then supply water from the well to your home. Most people would not go to the trouble of investing that



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much money without putting something down in writing. And, if not, when the property was sold for the first time, did an easement giving your family the right to use the water get filed along with the deed?

You may just find that something if you look hard enough. Try paying a visit to the recorder's office or land records office in your area and see if there is a document recorded against the land in which the well is located that documents these rights. If you find something, you would have found the document that should give you the right to continue to use the well and bring that document to the bank's attention.

(There's also the question of what was the paper that your parents signed. If they signed over ownership of the water rights or gave up the easement that they had, then they may be out of luck.)

If 40 years ago everything was

done with a handshake between the neighbors, you get into a murkier area of proving your claims. While you have used the well for over 40 years and can prove it, the issue then depends on whether you can prove that you have an easement or a license with the neighbor. The difference between these two is quite large: An easement would and could be permanent, while the license agreement might be temporary and revocable.

If drilling for a well on your land was impossible back then, it would likely mean that the parties intended for the well to benefit the neighboring land for quite some time as the neighbor's need and requirement for water might only be satisfied through the use of this one well. We don't know that, but we are thinking about different scenarios that might have been going on 40 years ago.

We came across a parcel of land in

North Carolina some years ago and that land had various wells. Those wells supplied water to the home where the well was located along with homes on adjacent lands. In that property, the wells were all located on this specific parcel of land due to the problem in drilling for wells on adjacent properties. It appeared that this one property had the only or best location for the wells. Granted, the well use and other rights were well documented, but it does indicate how owners will go to great lengths to get water and keep their water.

Some states have specific laws relating to the drilling of a well and have extensive legal case law on this issue. We'd suggest you talk to a real estate attorney in your area that has experience with water rights to see if there is any law in your state that would help your case. If there are specific laws or cases in your state that advance your position, your attorney can advocate those positions for you. Eventually it would be wise to put it all on paper and record the rights that you have to the well and the rights to get the water.

That said, you might ultimately be OK even if you can't find paperwork. We mentioned that an easement is generally a right that burdens one parcel of land and benefits a different parcel of land. Under certain circumstances, you can create an easement even when one was not created in writing.

The classic example is when an owner divides his land into two parcels: one in the front of the property and one in the rear. The parties forget to create an easement, but the only way to get access from the road to the rear parcel is through the existing road going through the front parcel. If the well that you are discussing was part of a parcel division and the only way for you to get your water was to continue to get it from the well to your home, you might have an easement.

However, if we go back 40 years ago and the owner of the land on which the well is situated indicated that you could keep the well in place but he could notify you at any time to abandon the well and remove your piping, you would have received a revocable license and might be in trouble trying to keep the well and its use.

We can think of quite a number more examples like these on both sides of the coin, so we'd like you to talk to an attorney about your issue. Let us know what happens.