



ROB SUMMERFIELD

STATE REPRESENTATIVE • 67th ASSEMBLY DISTRICT

August 25th, 2021

Members of the Assembly Committee on Housing, Commerce, and Trade

Testimony on 2021 Assembly Bill 208

Relating to: maintenance and repair of private roads

Dear Committee Members:

Thank you for providing me with the opportunity to testify at today's public hearing on Assembly Bill 208. I appreciate your time and consideration of this legislation.

Currently, there is no provision in Wisconsin state statutes defining the responsibility of a property owner for maintenance and repair of a private road or street. This complicates real estate transactions, as Fannie Mae guidelines require the following:

1. An enforceable maintenance agreement;
2. State statutory provisions defining the responsibilities of property owners for the maintenance and repair of a private street; or
3. Compensation for loss executed by the original lender.

Assembly Bill 208 seeks to address this issue by codifying in statute the common practice currently used for maintenance of private roads in Wisconsin. This bill defines the responsibilities of property owners for the maintenance and repair of private roads or streets, without requiring any action on the part of those owners. The template created by this bill which defines how that action would occur is already being practiced in Wisconsin. We believe this will meet the requirements of Fannie Mae and therefore expedite mortgages and real estate sales in Wisconsin.

I ask that you join me in supporting this bill.



JOAN BALLWEG

STATE SENATOR • 14TH SENATE DISTRICT

Assembly Bill 208: Private Road Maintenance
Assembly Committee on Housing and Real Estate
Testimony of Senator Joan Ballweg
August 25, 2021

Good morning, members of the committee. I am sorry that I am unable to attend in person, but I appreciate you hearing this important piece of legislation.

The costs of repairing and maintaining private roads are usually divided among the beneficial users of that road. However, the lack of a written agreement between those beneficial users can not only lead to disputes, but it may also hinder real estate transactions. Federally sponsored loans by Fannie Mae have lending guidelines that require one of the following for landlocked real property accessible via a private road: (1) an enforceable maintenance agreement, (2) state statutory provisions defining the responsibilities of these beneficial users for maintenance and repair of private roads, or (3) an indemnity for loss executed by the original lender. Fannie Mae requires this since lenders need to know what their rights and responsibility are for the road, especially in cases where they foreclose and take the property back.

This bill defines the responsibilities of property owners for the maintenance and repair of private roads to meet Fannie Mae guidelines. To be clear: this bill does *not* require anyone to enter into an unwanted agreement. Rather, it simply creates a default that would apply only if the beneficial users do not have a written agreement dividing up maintenance and repair costs to ensure lending on these properties can still occur.

This bill stipulates that if there is no existing written agreement between the beneficial users of a private road, then the beneficial users shall contribute an equitable share based on the amount and intensity of each beneficial user's actual use in proportion to the amount and intensity of all beneficial users' actual use. To equitably determine what costs are reasonable to be shared among the beneficial users, all must be noticed and have the opportunity to be a part of the decision-making process. In cases where there is excess damage beyond normal wear and tear, those costs are not required to be shared under this bill. If the beneficial users already have a written agreement dividing up costs, then this existing agreement controls.

Without agreements in place, disputes over splitting up these maintenance costs are more likely to occur and go to the courts. The court will likely split up the costs equitably similar to this bill, so having this outlined in statute may help prevent the need to settle disputes through the courts. Overall, this bill fixes an obstacle for property owners and lenders when dealing with properties on private roads, while keeping private property rights intact.

This bill is supported by the Wisconsin Land Title Association, the Wisconsin Register of Deeds Association, NAIOP Wisconsin, and the Wisconsin Realtors Association.

Thank you for your time and consideration of this legislation.

August 24, 2021

Wisconsin Assembly Committee on Housing and Real Estate

Re: Support for Assembly Bill 208 (2021-22)

Dear Committee:

I write to you as the current Co-Legislative Chair for the Wisconsin Land Title Association (WLTA) as well as the immediate past-President of the WLTA. Over the past few years Fannie Mae, being a primary source for Wisconsin residents to obtain home mortgage loans, revised its underwriting guidelines for landlocked homes where access is via a private road. In such instances Fannie Mae requires either:

- an enforceable maintenance agreement (which are rare),
- a state statutory provisions defining the responsibilities of property owners on the private road (we don't have this— Senate Bill 283 is intended to meet this bullet point), or
- an indemnity from the originating mortgage lender (which is unlikely).

Because of the foregoing people seeking to purchase or refinance homes located on a private road have been presented with a substantial hurdle. To respond, the WLTA worked with the State Bar-Real Property Probate and Trust Section and the Wisconsin Realtors Association to create proposed legislation to define the responsibilities of property owners on the private road to meet the Fannie Mae requirements. We would ask for your support to remove a hurdle to home ownership in Wisconsin.

Very truly yours,
Knight Barry Title



Cheri Hipenbecker
General Counsel