



Senate Bill 283: Private Road Maintenance
Senate Committee on Housing, Commerce and Trade
Testimony of Senator Joan Ballweg
June 15, 2021

Good morning, members of the committee. Thank you for 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. I am happy to answer any questions you may have.



ROB SUMMERFIELD

STATE REPRESENTATIVE • 67th ASSEMBLY DISTRICT

June 15, 2021

Senator Jagler, Chair

Senator Feyen, Vice-Chair

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

Testimony on 2021 Senate Bill 283

Relating to: maintenance and repair of private roads

Dear Chairman Jagler, Vice-Chair Feyen, and Committee Members:

Thank you for providing me with the opportunity to testify at today's public hearing on Senate Bill 283. 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.

Senate Bill 283 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.



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June 15, 2021

To: Chairman Jagler and Members of the Senate Committee on Housing Commerce and Trade

Re: SB 283- Maintenance and repair of private roads

ISSUE: There is a need for legislation to define the responsibilities of property owners for the maintenance and repairs of private roads.

WHY: For landlocked real property where access is via a private drive or street, Fannie Mae (FNMA), which is a leading source of mortgage financing in the United States, lending guidelines require one of the following: (i) an enforceable maintenance agreement, (ii) state statutory provisions defining the responsibilities of property owners for the maintenance and repair of a private street, or (iii) an indemnity for loss executed by the originating lender.

This has presented a hurdle for real estate transactions in Wisconsin where no enforceable maintenance agreement exists as Wisconsin does not have statutory provisions defining the responsibilities of property owners for the maintenance and repair of private roads or streets.

FNMA GUIDELINES: FNMA Selling Guide- <https://www.fanniemae.com/content/guide/selling/index.html>.

Community-Owned or Privately Maintained Streets

If the property is located on a community-owned or privately-owned and maintained street, an adequate, legally enforceable agreement or covenant for maintenance of the street is required. The agreement or covenant should include the following provisions and be recorded in the land records of the appropriate jurisdiction:

- responsibility for payment of repairs, including each party's representative share;
- default remedies in the event a party to the agreement or covenant fails to comply with his or her obligations; and
- the effective term of the agreement or covenant, which in most cases should be perpetual and binding on any future owners.

Note: If the property is located within a state that has statutory provisions that define the responsibilities of property owners for the maintenance and repair of a private street, no separate agreement or covenant is required.

If the property is not located in a state that imposes statutory requirements for maintenance, and either there is no agreement or covenant for maintenance of the street, or an agreement or covenant exists but does not meet the requirements listed above, the lender may still deliver the loan. However, the lender is required to indemnify Fannie Mae (as described in [A2-1-03, Indemnification for Losses](#)) against all losses incurred by Fannie Mae as a result of the physical condition of the street or in order to establish and/or retain access to the street.

Summary of Legislation-

This bill would define the responsibilities of property owners for the maintenance and repair of private roads or streets. It would not require any action on the part of those owners, but would merely create the template for how an action would occur. We believe this will meet the requirements of Fannie Mae and therefore expedite mortgages and real estate sales.