

Law You Should Know: The Importance of Maintaining Private Roads

The Importance of Maintaining a Private Road

by Thomas Lane, Attorney at Law

The title of this commentary is intentionally ambiguous. "Maintaining a private road" in New Mexico means at least two things. First, one needs to maintain the physical road itself, and second, one needs to maintain its legal status as a "private road" in order to maintain the legal protections that rely on that status. This attorney defers the physical road maintenance issues until a future article, making note that the existence of a road maintenance agreement can and often does affect one's ability to sell land. Instead, for this entry, this attorney gives a general overview of legal status issues below.

New Mexico, as other states, has numerous classes of roadways: federal (as in the interstates or US highways), state (as in Highway 14 on the east side of the Sandias), county, city, and private. These roads vary by the party responsible for maintaining them, and they vary by the duty of care owed to drivers who use the road. If you live on the road, its status matters to you, as that affects who pays for its maintenance, who might be liable for tort claims in the event of an accident, and what the legal standard of care for the road might be in the event of an accident.

Private roads are numerous and various in New Mexico. This attorney has dealt with private roads ranging from perhaps 1/4 mile to something over 20 miles in his various cases, with 1 to perhaps 40 properties being accessed by the road. What the roads share in common is a limited and defined number of users, and no regular "public services" on the roadway. No "public services" does not mean that your meter reader cannot come to check the meter, or that the sheriff or fire department cannot respond to an emergency call-but it does mean, for example, that the U.S. Post Office cannot be delivering mail to mailboxes along the road. Mailboxes need to be placed along the public roadway.

If you can maintain the status of a private road, your tort exposure for accidents along that road is greatly reduced. The exposure is reduced because "common usage of the road" becomes its standard, rather than the higher standards required of public roads. "Common usage" basically means that someone coming from the streets of Manhattan will be held to the safety standards of the road he or she is driving on, rather than the standards of Manhattan. Somebody driving on a private road is basically doing it as his or her own risk.

Just because a road is private does not mean that the government necessarily has no responsibility regarding its maintenance. There was a matter this attorney advised on in Taos, where a public culvert ran beneath a private roadway. During a storm, the culvert clogged and the roadway above was eroded to the point that vehicles could not cross it. Taos initially resisted repairing the road, claiming it was the road owner's responsibility. After some discussions regarding, for example, Taos' potential liability in the event that ambulance or fire services were unable to reach the residence in an emergency, Taos did repair the roadway. The government did not own the roadway, but because the public culvert was the cause of the damage, the

government made the repairs.

Among the issues this attorney plans to address in the future is the emerging need for road maintenance agreements as an emerging prerequisite for land being sold, the proper way of creating an enforceable and mutually beneficial road maintenance agreement, and effective ways of implementing such agreements.

The above is intended for informational purposes regarding the general opinions of the author and should not be taken as legal advice by any party involved in disputes or potential disputes regarding these or any other issues. Anyone who has or may have a legal issue regarding the matters addressed above is advised to seek an attorney, as the general nature of the above commentary cannot address the myriad issues that may arise.