

MLTA Spring Summit 2022 – March Madness



# No Access

That's an issue



# DISCLAIMER

- The materials in this presentation are provided for informational purposes only and do not constitute a legal opinion or legal advice.
- On all matters touched upon by this presentation, it is recommended that you consult with your attorney for: 1) definitive interpretations of the laws and regulations involved, and 2) specific guidance on your business practices.
- The stories you are about to hear are true. The names were changed to protect the innocent.

## ACCESS

- Landlocked properties
- Islands
- Seasonal Roads
- Private Roads



# Why do we care about access?

- Property without legal access is worth less than property with legal access.
- Most lenders, and the secondary market, require legal access and most lenders require that the legal access be insured.
- Most people will not buy property without legal access.
- Many people rely solely on the title insurance agent to determine if there is legal, insurable access.

## Access vs. Insurable Access

Legal access means the property can be accessed from a public road without trespassing.

Insurable access means a title company has agreed to insure legal access.

A parcel can have legal access (say, over the existing trail road), which the title company may not find insurable (because it is indefinite where that road goes).

Conversely, a title company may insure access where it is not risky to do so, even if there is no legal access. (Such as where a roadway has been used for many years (rare), particularly if it is being maintained by the government.)

# Again, why do we care? Because we insure it.

1. Legal Access:  
2006 Policy  
There is a legal way to get to the property without trespassing.
2. Physical Access:  
A human being can physically enter the property but only if they trespass on someone else's land.
3. Legal and Physical:  
Homeowners  
A human being can physically enter the property without trespassing. Also called legal and pedestrian access.
4. Legal and Vehicular:  
Homeowners  
A standard automobile may physically enter the property without trespassing.
5. Legal, Vehicular, & Pedestrian:  
Homeowners  
A human being and a standard vehicle can enter the property without trespassing.

# And access isn't covered by the MIA!!

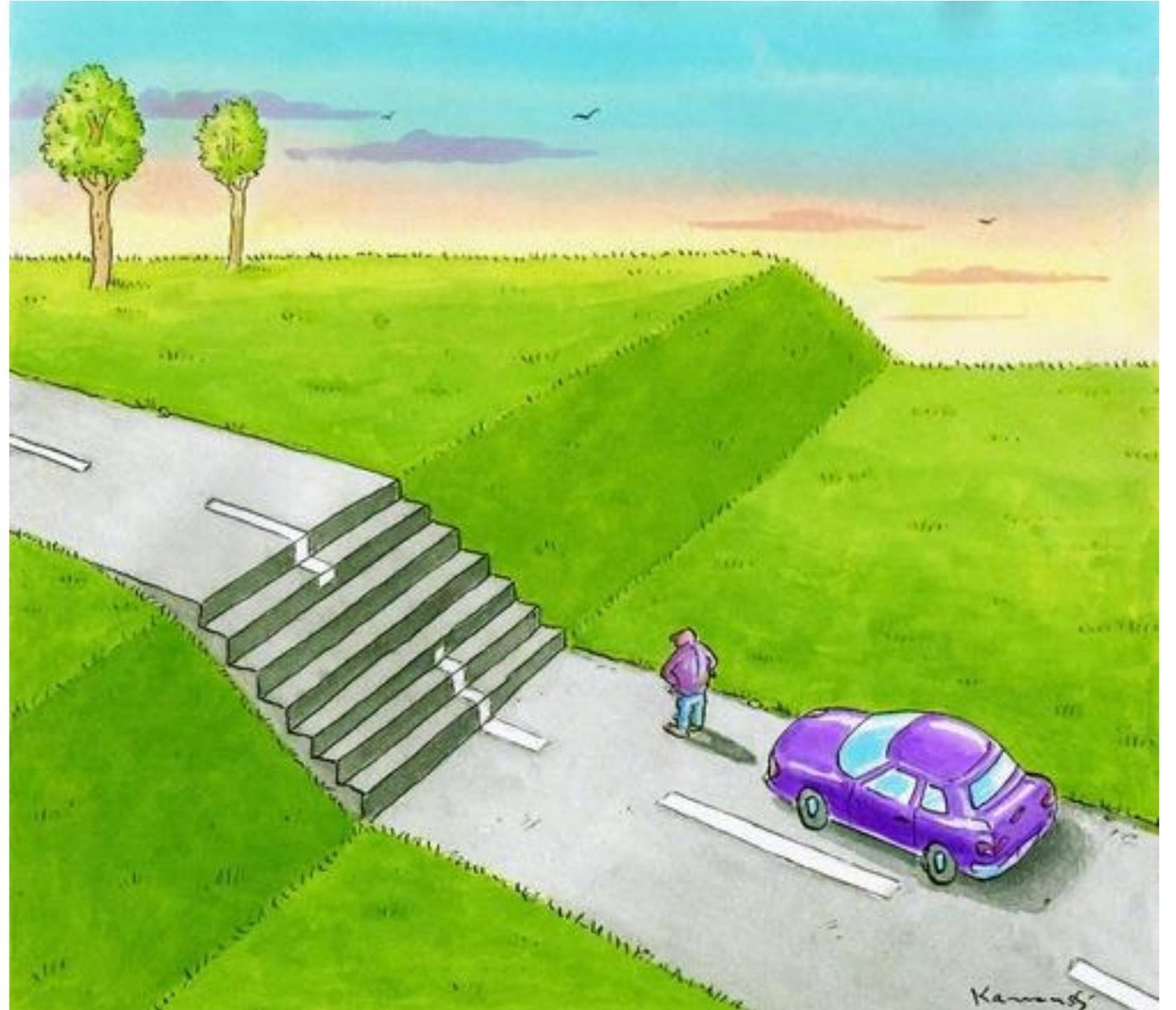
- Unfortunately, access is NOT one of the items covered by the Mutual Indemnity Agreement between underwriters.
- And you can't rely on warranties of title to sue the seller if it turns out there is no access. There simply is no warranty of access in Michigan law.
- Access is something that must be reviewed on each insured transaction.

# Standard 2006 Owner and Loan Policies insure:

“No right of access to and from the Land.”

Notice that these policies do NOT insure that there is access. They ONLY insure that there is a right of access.

Basically, it means there is a legal way to get to the property. We are not concerned with physical access.



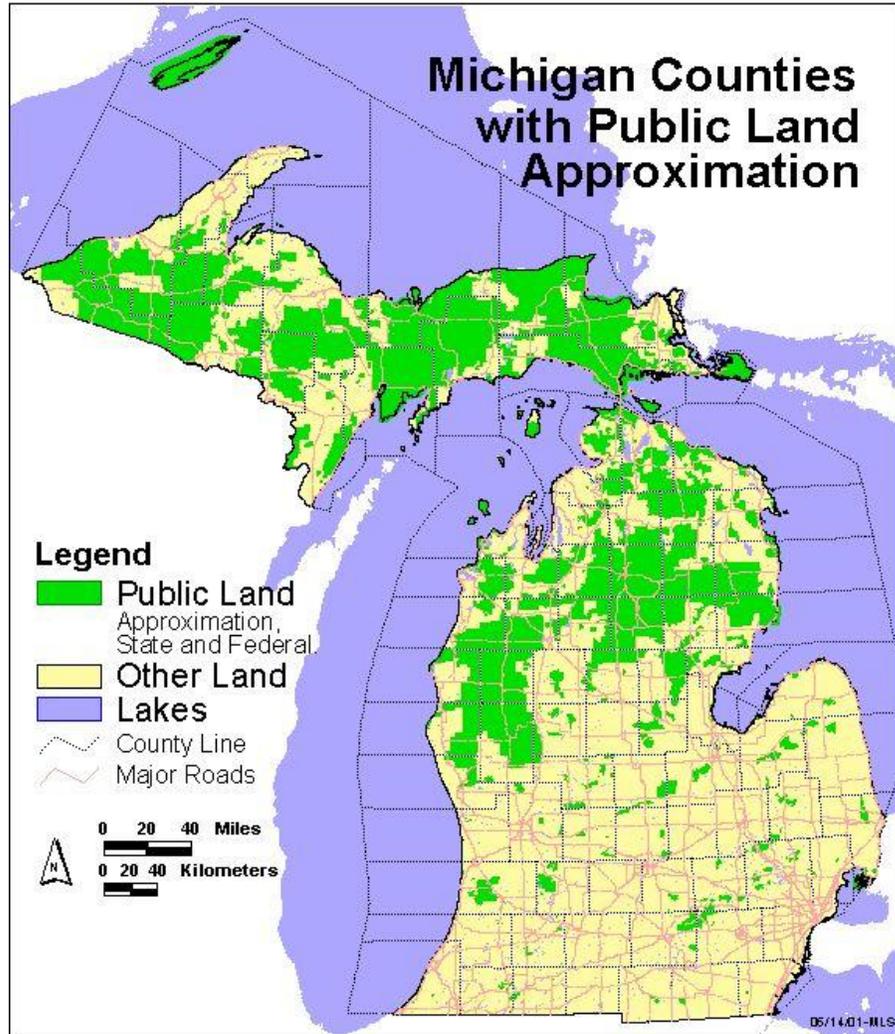
# Expanded Coverage Owner Policy:

“Actual pedestrian and vehicular access based on a legal right.”

Notice that these policies insure that you have a legal right AND that there is a physically open road to the property.



# LANDLOCKED PROPERTIES

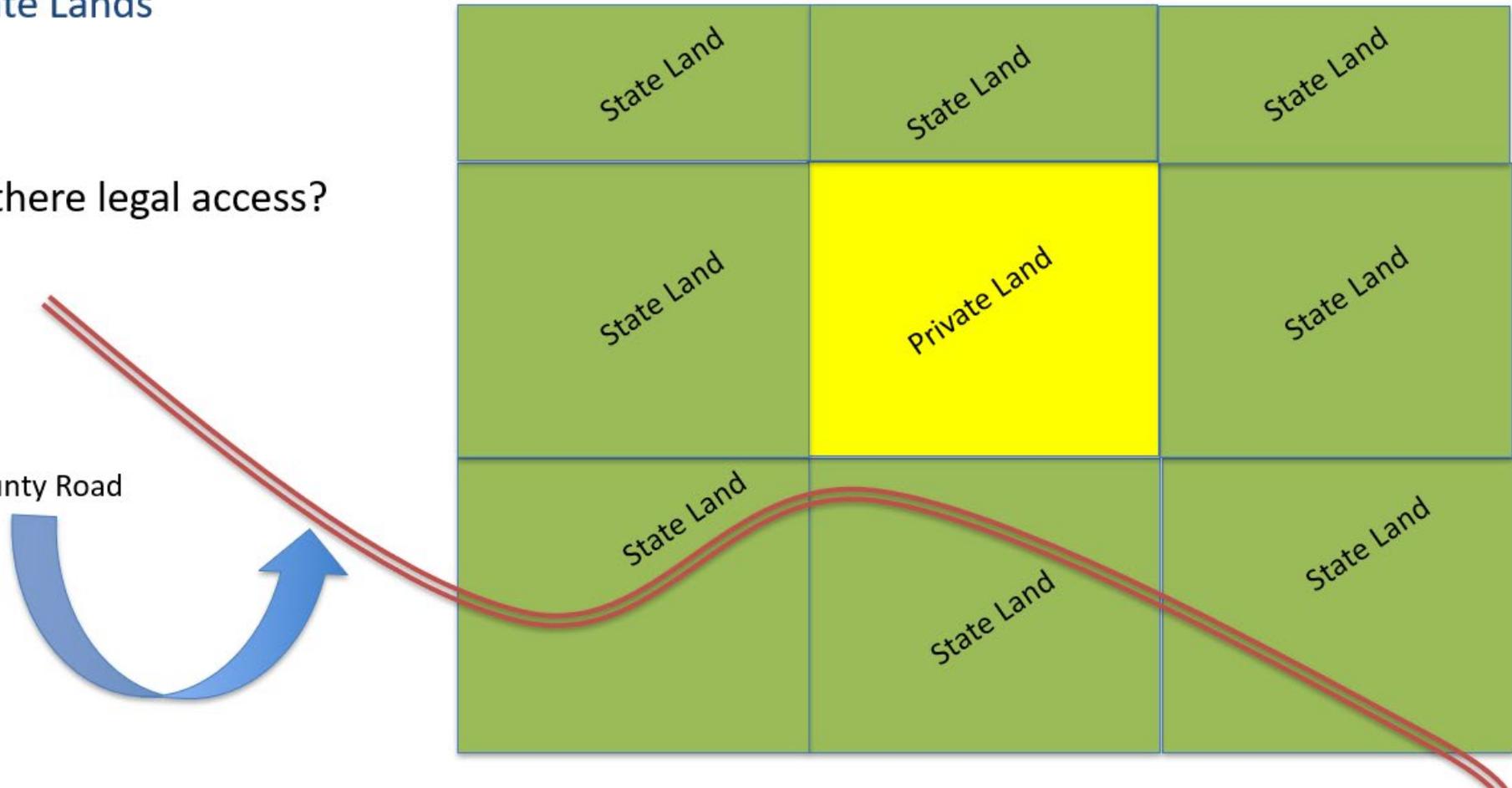


# LANDLOCKED BY STATE LAND

State Lands

Is there legal access?

County Road



Rule 299.922. On land owned or under the control of the department, **it is unlawful to** do any of the following:

(p) **Use or operate any wheeled, motorized vehicle, except a PAMD, on state owned land in the Upper Peninsula of this state**, except on a designated route, a designated trail, a designated area, or a forest road not otherwise posted as closed to the use of motorized vehicles or entry.

(q) **Use or operate any wheeled, motorized vehicle, except a PAMD, on state owned land in the Lower Peninsula of this state**, except on a designated route, a designated trail, or a designated area. A wheeled, motorized vehicle that is properly registered under 1949 PA 300, MCL 257.1 to 257.923, may be operated on a forest road not otherwise posted as closed to the use of motorized vehicles.

# Maybe you can secure an easement but.....

- Rule 324.2123a. (1) Subject to section 2124 and notwithstanding section 2123, the department shall grant or otherwise provide for an easement for a road over state-owned land under the jurisdiction of the department to an individual if all of the following conditions are met:



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# All of these stars must align....

- (a) The individual applies for the easement on a form provided by the department.
- (b) The individual does not have other legal access to the individual's land.
- (c) The easement does not conflict with any of the following: (i) With an existing program or management as described in an existing plan of the department. (ii) If the land was acquired using revenue from hunting and fishing license fees, federal funds from a wildlife or sport fish restoration program, or other state or federal program funds, with state or federal laws governing the use of lands acquired through the respective program. (iii) With a local ordinance.
- (d) The easement does not cross an environmentally sensitive area, including, but not limited to, a wetland as defined in section 30301 or a critical dune area as defined in section 35301.
- (e) The individual offers a similar road easement to the department to provide public access to state-owned land across the individual's land to which the easement is to be granted by the department, where applicable. The department shall not accept a road easement under this subdivision if the road easement would end at a body of water.
- (f) The individual does all of the following: (i) Pays the cost of a survey. (ii) Pays to the department the fair market value of the easement. The fair market value of the easement granted by the department shall be offset by the fair market value of any easement granted to the department under subdivision (e)

# And you better hope none of these apply:

- MCL 324.2124. The department shall not grant an easement over state-owned land under the jurisdiction of the department if any of the following apply:
  - (a) The proposed easement is over land designated as a wilderness area, wild area, or natural area under part 351.
  - (b) The proposed easement is over land in an area closed to vehicular traffic pursuant to management as described in an existing plan of the department.
  - (c) The construction or use of the new or existing road will result in unreasonable damage to or destruction of the surface, soil, animal life, fish or other aquatic life, or property.

# State of Michigan Private Road Easement Application

[https://www.michigan.gov/documents/dnr/Application\\_Pkt\\_400160\\_7.pdf](https://www.michigan.gov/documents/dnr/Application_Pkt_400160_7.pdf)

		Michigan Department of Natural Resources – Real Estate Services Section		<b>DNR Cashier's Use Only</b>	
<b>PRIVATE ROAD EASEMENT APPLICATION</b>					
<small>By authority of Part 21 of Act 451, P.A. 1994, as amended.</small>					
<b>Please Note: For road access only. Not for Utility Easements. See page 3 for requirements.</b>					
<b>LOCATION OF DESIRED EASEMENT</b>					
County		Township, City, or Village Name		Town	Date
Description					
Dimensions of easement request crossing State-owned land – Width: _____ feet (20 ft. standard)					
Total Length: _____ feet					
If the DNR determines that a similar road easement across your land is necessary in order to provide public access to State-owned land, you will be required to offer such an easement to the State in order to be eligible to receive an access easement. Are you willing to offer an easement to provide public access across your land if it is determined to be necessary by the DNR?					
<input type="checkbox"/> No					
<input type="checkbox"/> Yes					
<b>LOCATION OF OFFERED EASEMENT</b>					
County		Township, City, or Village Name		Town	Date
Description					
<b>PRIVATE ACCESS EASEMENT QUESTIONS</b>					
1. Which type of private easement are you considering?					
<input type="checkbox"/> The construction of a new access route or trail crossing (skip to question #5)					
<input type="checkbox"/> The legal recognition of an existing access route across State-owned land or trail corridor					
<input type="checkbox"/> The modification of a legally recognized access easement or trail corridor crossing					
<input type="checkbox"/> Other (please describe):					
2. If you are currently crossing State-owned land or trail corridor to access your property, for what purpose(s) are you using the access route? (Check all that apply)					
<input type="checkbox"/> For access to _____ single-family residence(s)					
<input type="checkbox"/> For access to _____ multi-family residence(s)					
<input type="checkbox"/> I am not currently crossing State-owned land or trail corridor					
<input type="checkbox"/> For access to property for agricultural or timber management activities					
<input type="checkbox"/> For access to vacant property used for recreational purposes only					
<input type="checkbox"/> For access to property used for a commercial or industrial use					
<input type="checkbox"/> For access to a platted subdivision					
<input type="checkbox"/> Other (please describe):					
3. If you are currently crossing State-owned land or trail corridor to access your property without a legally recognized easement, has the DNR provided to you written authorization for this activity?					
<input type="checkbox"/> No					
<input type="checkbox"/> Yes (Please attach copies of all documents authorizing this use)					
<input type="checkbox"/> I am not currently crossing State-owned lands or trail corridor					

4. If you are currently crossing State-owned land or trail corridor to access your property without a legally recognized easement and without any other form of written authorization from the DNR, provide any evidence that will document the span of time that you have been using the access route. Potential sources of documentation are listed below as examples for you to consider.

<input type="checkbox"/> County Road Commission driveway permit	<input type="checkbox"/> Private landowners leases, licenses or letters of permission
<input type="checkbox"/> Water well permit	<input type="checkbox"/> Railroad leases, licenses, or letters of permission
<input type="checkbox"/> Septic drain field construction permit	<input type="checkbox"/> Verifiable photographic evidence showing use of the access route
<input type="checkbox"/> Local building permit	<input type="checkbox"/> Soil and sedimentation permits
<input type="checkbox"/> This question is not applicable to my situation	<input type="checkbox"/> Other (please describe):

**PRIVATE ACCESS EASEMENT QUESTIONS**

5. If this easement will involve a new access route, what is the intended purpose for the new access route? (Check all that apply)

<input type="checkbox"/> Provide access to _____ single-family residence(s)	<input type="checkbox"/> This easement request does not require a new access account
<input type="checkbox"/> Provide access to _____ multi-family residence(s)	<input type="checkbox"/> Provide access to property for a commercial or industrial use
<input type="checkbox"/> Provide access to vacant property for recreational use	<input type="checkbox"/> Provide access to a platted subdivision
<input type="checkbox"/> Provide access to property for agricultural or timber management activities	
<input type="checkbox"/> Other (please describe):	

6. Do you believe that your property has legal access?

No

Yes (This may make your application for an access easement ineligible)

7. If you answered "No" to question #6, your application will not be considered complete for review until documentation is provided that a title search has been conducted on all real estate transactions involving the parcel and its parent parcel(s) for the past 40 years and that the search failed to discover any means of legal access. In addition, you may provide copies of any other documentation that will support your claim that your property does not have legal access.

An attorney has rendered an opinion regarding the status of legal access to the parcel.

8. Have you discussed the details of your proposed easement with any employees from your local DNR office?

No

Yes

If "Yes", which staff members have you contacted?

**CONTACT INFORMATION (Please print or type)**

Applicant Name		Organization	
Telephone Number	Fax Number	E-mail Address	
Mailing Address		City, State, ZIP Code	
Applicant Signature			Date
DNR Staff Signature (Proposal reviewed by staff only. This signature is not approval of easement request.)			Date

Please indicate how title to the desired land is to be conveyed.

In Applicant's name only – If applicant is someone other than an individual, please identify legal entity (i.e. a Michigan limited liability company, a Michigan corporation, a municipal governmental unit, etc.). If the applicant is a man, please indicate single or married.

As Tenants by the entirety (a married couple)

As Joint Tenants with full right of survivorship

As Tenants in Common (Two or more persons, each owning a separate undivided interest in the whole property)

**ISSUE EASEMENT TO:**

Please use full given name and indicate marital status of all males

Names (s) (Print or Type)

\_\_\_\_\_

\_\_\_\_\_

Street Address

\_\_\_\_\_

City, State, ZIP Code

\_\_\_\_\_

Telephone Number

\_\_\_\_\_

**INFORMATION:**

**REQUIRED DOCUMENTATION OF PROPOSED EASEMENT TO BE SUBMITTED WITH APPLICATION:**

1. Completed Private Easement Application also signed by local DNR staff following the pre-application meeting
2. A copy of the deed for your parcel;
3. The local tax identification number for your parcel;
4. A detailed map showing the following:
  - a. The location of your property in relation to nearby public or private roads;
  - b. Indicate the property that you own and the approximate location desired for the requested easement;
  - c. Indicate the state-owned land in relationship to your property and the requested easement;
  - d. If deed research indicates that your parcel was split from a larger parent parcel (as described in Section 560.108 of the Land Division Act of 1967, Public Act 288), show the location of that residual parent parcel in relation to the location of your parcel (please see attached excerpt);
5. A recordable survey describing the route of your requested easement as well as a legal description of the land to be benefitted by the easement that meets the DNR specifications that were provided at the pre-application meeting. To meet document recording requirements, description must be provided:
  - On 8.5 X 14 inch paper,
  - using a minimum font size of 10 point, and
  - minimum 0.5 inch margins
6. A title search on all real estate transactions involving the parcel and its parent parcel(s) for the past 40 years; and,
7. If available, provide a copy of your title insurance policy for the parcel to be accessed.
8. **Application Fee of \$300.00.**

**ADDITIONAL REQUIREMENTS OF PROPOSED EASEMENT AFTER REVIEW BY DNR:**

1. Some Department-managed lands were acquired with assistance from the Federal Government. Permission from Federal Agencies may be required prior to the Department granting final approval of your request.
2. No easement shall be granted for land in excess of the amount necessary for the approved use. Easements shall only be granted for the current fair market value for such easement rights as determined by the Department.
3. **If the Michigan Department of Natural Resources approves this application, an invoice will be sent for the easement rights, and vegetation consideration fee. The easement will be issued after receipt of payment in full.**

# LANDLOCKED BY FEDERAL LAND

Private land surrounded by federal land is called an “inholding”.



# Access over Federal Land?

There are some federal statutes that suggest that inholdings have an automatic right to an easement to the property. Courts have ruled otherwise. Unless you are willing to fund a federal court lawsuit, the permitting process will have to be used.



Policy: It is the policy of the Forest Service to grant adequate access across National Forest System lands in accordance with regulations 36 CFR 251, Subpart D, **when no reasonable alternative exists across non-federal lands**

[36 CFR 251.110(g); 7/2001].  
National Forest System Roads (NFSR) are not public roads (FSM 7700) in the same sense as roads that are under the jurisdiction of public road agencies, such as states, or counties.



Bigfoot Crossing

NFSRs are not intended to meet the transportation needs of the public at large or general residential access. Instead, they are authorized for the administration and utilization of National Forest System lands. Although generally open and available for public use, use of NFSR's is **at the discretion of the Secretary of Agriculture**. Through authorities delegated by the Secretary, the Forest Service may restrict or control use to meet specific management direction. Commercial users, permittees, or contractors also may be required to share in the cost of developing, improving, and maintaining forest roads to a safe and adequate road standard.



Landowners shall be authorized such access as the authorized officer deems to be adequate to secure them the reasonable use and enjoyment of their land.

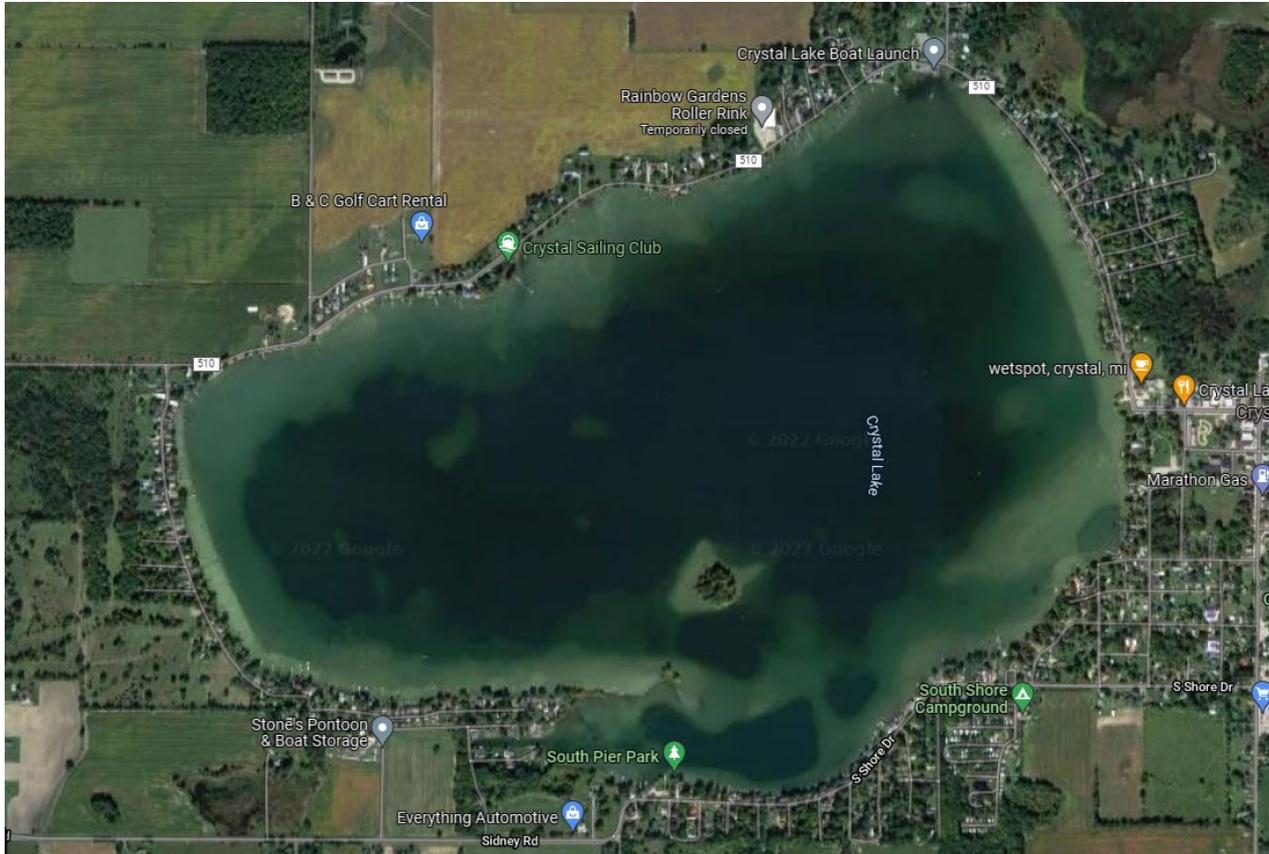


Where a landowner's ingress or egress would disturb the surface or would require the use of Government-owned roads or trails not authorized for general public use, the landowner must apply for and receive a special-use or road-use authorization.

Where there is existing access or a right of access to a property over non-National Forest land or over public roads that is adequate **or that can be made adequate**, there is no obligation to grant additional access.



# Islands



Best to state the obvious.

“Lack of a right of access to the subject property. It is located on an island.”

This will be in addition to the riparian rights exceptions your underwriter requires for water-front property.

**Fill a 2-liter  
soda bottle  
with dimes.  
You should  
have around  
\$700 when it  
is filled.**

**#DimeChallenge**



# SEASONAL ROADS



Michigan has many miles of seasonal roads that lead to pretty lakes, rivers, hunting lodges and more.

# Attributes of a Seasonal Road

- Not designed to handle a lot of traffic
- Narrow with frequent sharp turns
- Not your typical roadbeds, anticipate swampy areas as there is no drainage.
- Signs might be posted.
- “Maintained” by local road commission



## **247.655a Seasonal county road system.**

Sec. 5a.

(1) The board of county road commissioners of each county may establish a system of seasonal county roads, which may be part of either the county primary road system, the county local road system, or both systems. A board of county road commissioners in establishing a system of seasonal county roads, may declare a road under the jurisdiction of the board to not be open to public travel during the months of November through April, which road shall then not be open to public travel.

(4) The designation of a road as part of the seasonal county road system shall not affect the certification of the road under this act, but if the road is not open to public travel during the months of December to April, the road shall be excluded for purposes of the distribution of snow removal funds under section 12a.

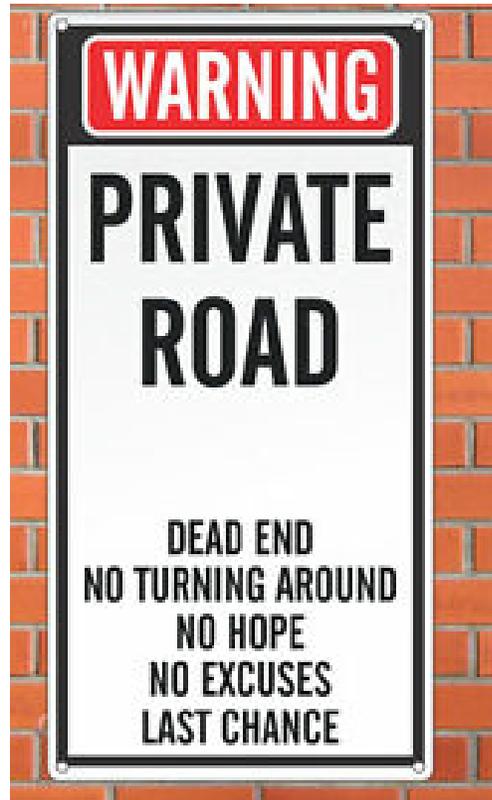
(5) A road included as part of the seasonal county road system shall be excluded for the purposes of determining the distribution of funds under sections 12(4) and 12b for each year in which the road is part of the seasonal county road system.

(6) A map shall be maintained and on display in the office of each board of county road commissioners which has established a seasonal county roads system which shall also inform the public of the dates the road or road shall not open to public travel.

(7) The board shall place and maintain signs on all roads designated as seasonal county roads, which signs shall describe the roads as seasonal county roads.

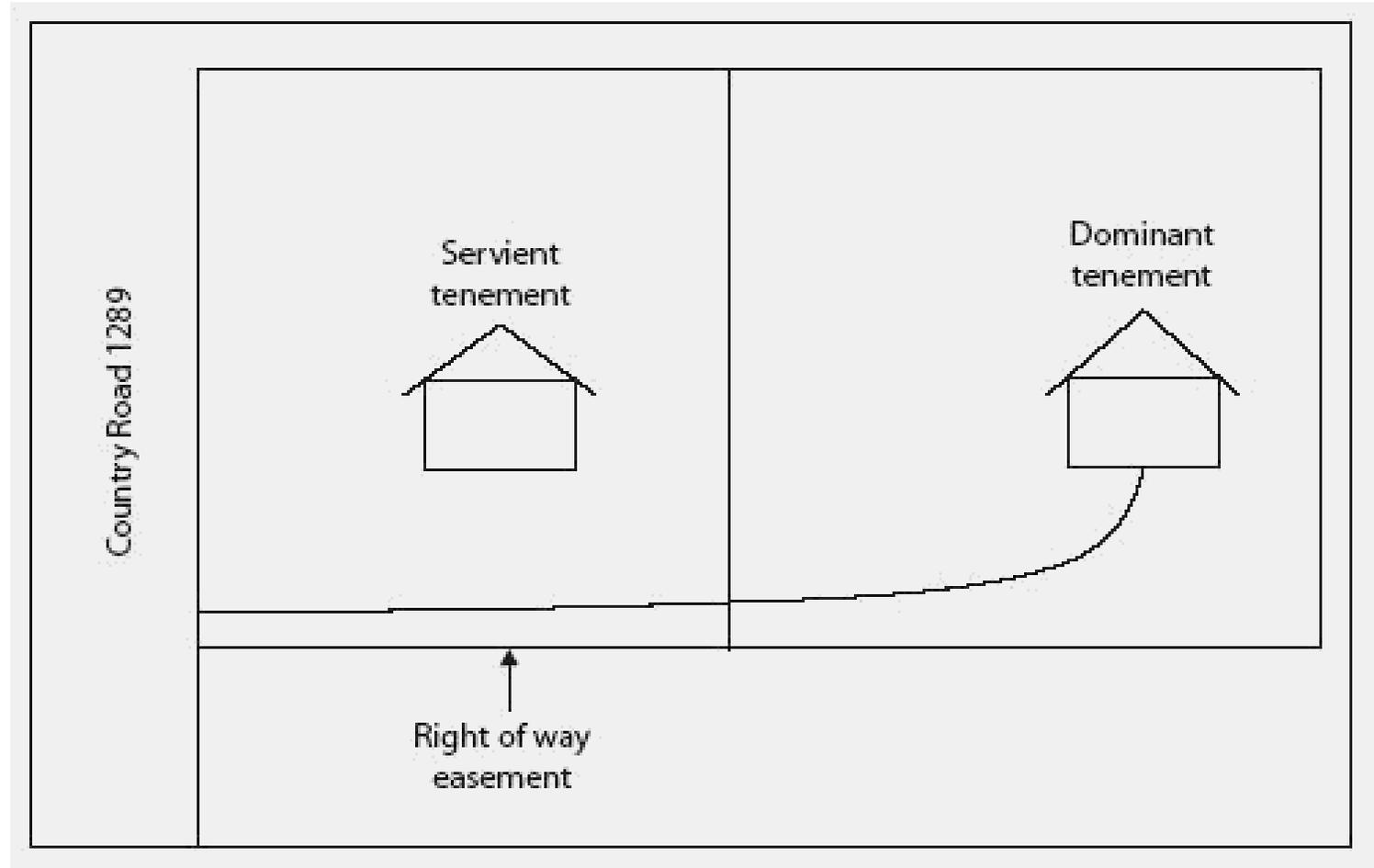
**History:** Add. 1981, Act 184, Imd. Eff. Dec. 23, 1981

# PRIVATE ROADS



# Insuring Access via Private Road

- If there is no direct access to a public road, access can be secured by granting an easement.
- This is a written agreement, grant or reservation that creates a right to use one parcel for ingress and egress to another.
- Can be a stand alone easement agreement or the easement can be granted or reserved in a deed.
- Lenders may require maintenance agreements however this is not typically a title insurance requirement.
- We do require that the easement be recorded.



# How to Insure Private Road Access?

Hint: Call your Underwriter.

You can remove the “Lack of a legal right of access exception.” from Schedule B once the easement is recorded.

This insures access.

You can insure the easement on Schedule A. This requires you:

- Search the burdened property
- List any exceptions to title for the easement property on Schedule B.
- Include a Schedule B exception for “Rights of the fee owner to parcel (burdened parcel) and the terms and conditions of the easement recorded at Liber X, Page Y.

## Important Reminder

When issuing the 2006 ALTA policies, we are only concerned with the legal right to use the easement for access to the property from a public road. It does not matter if putting in the road would be burdensome, exorbitantly expensive or impossible.



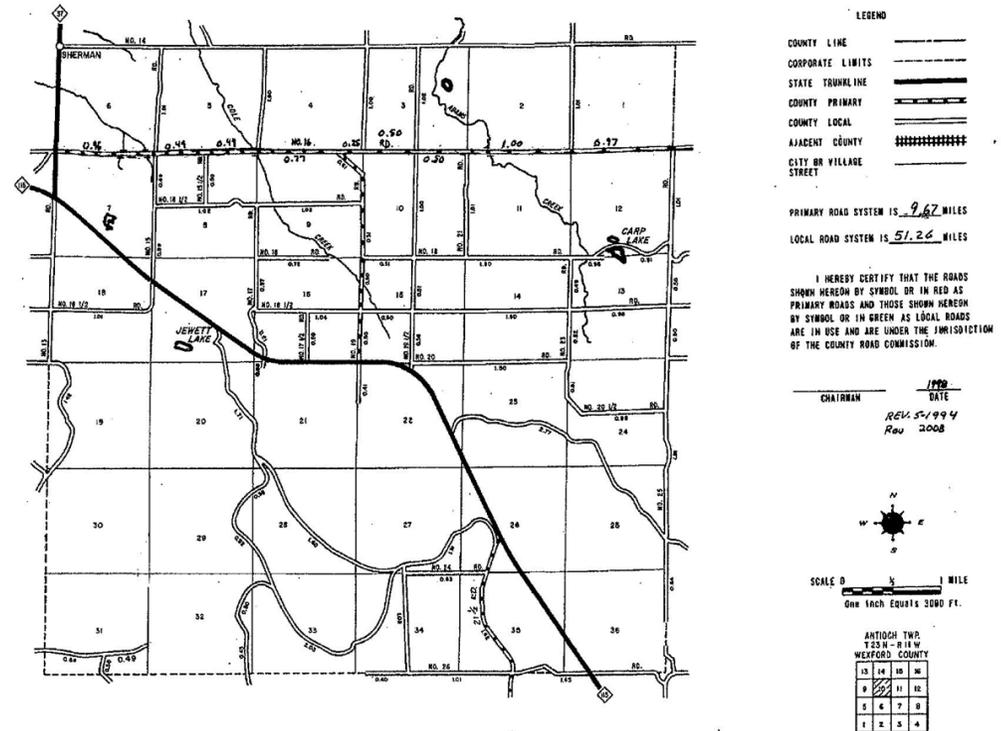
# USEFUL RESOURCES



# Act 51 Maps

County Act 51 maps show the rough location and length of all county roads and are filed with the state each year, for the purpose of road funding money.

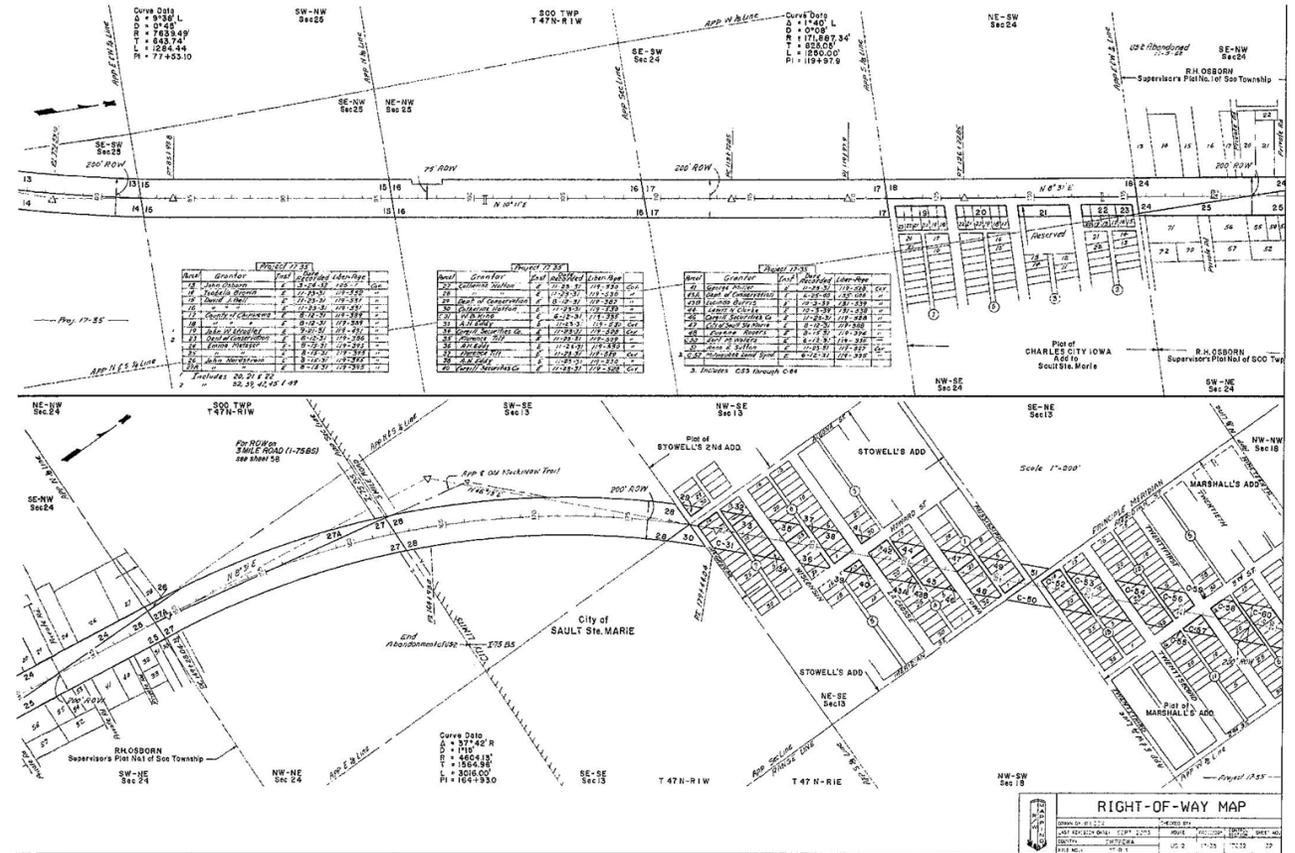
<https://mdotjboss.state.mi.us/SpecProv/act51.htm>



# State Highway Maps

The state maintains maps for each county, showing the location and dimensions of every state road right-of-way. These maps are available online. They also show the grantors of the right of ways, along with the county recording data for each of them.

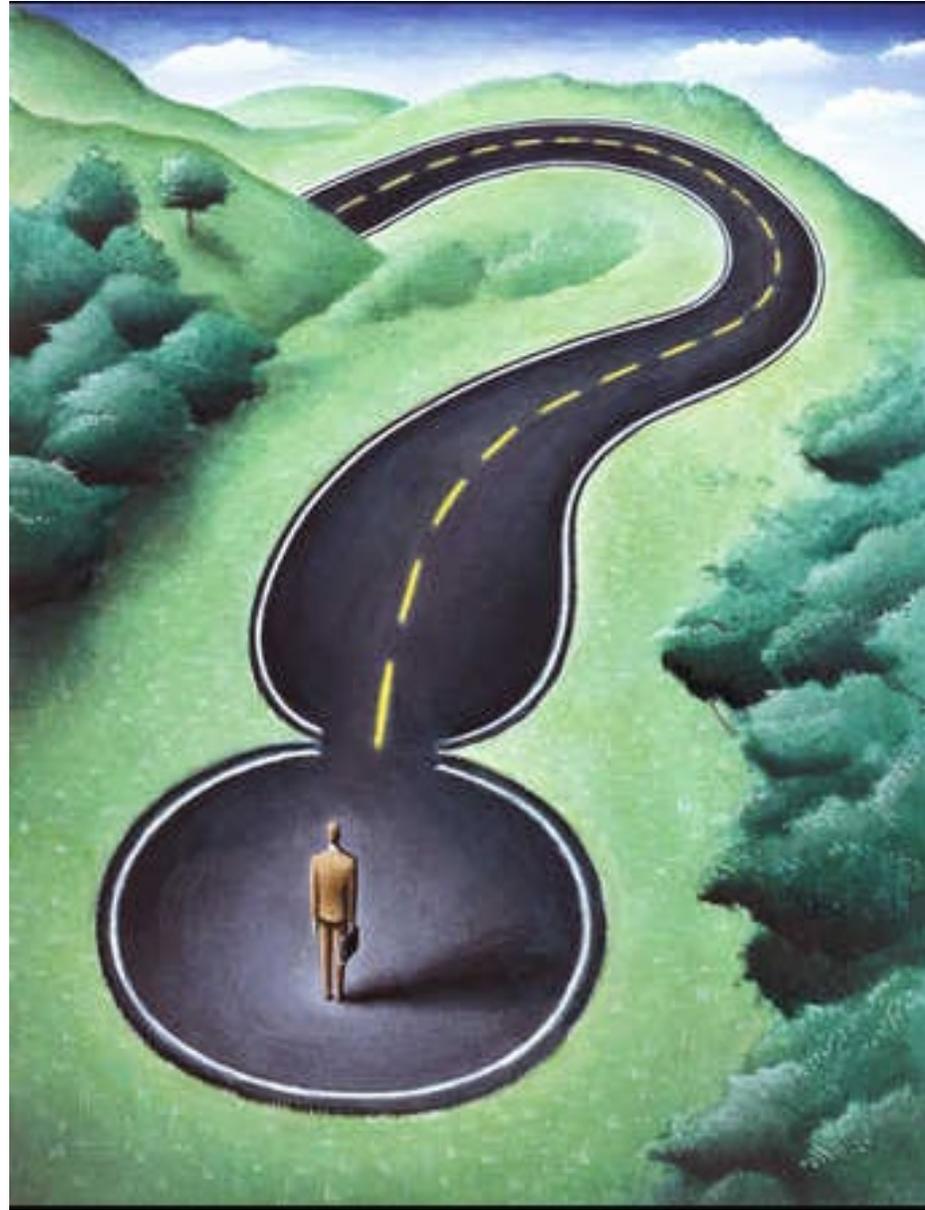
<https://mdotjboss.state.mi.us/BITMIX/rowMapFilesHome.htm>



## Your Friendly Underwriter

For real, call them. They will be more than happy to help you address access BEFORE it becomes a claim.





**Thank you for  
attending this  
Break Out Session.**

