You Can't Get There From Here

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Every year, my family vacations at a lake in Maine. We access the property through a series of increasingly narrow dirt roads, eventually arriving at a pretty house on a pretty lake surrounded by trees and the peaceful sounds of nature. Because working in title insurance claims naturally makes you a super-fun person, while driving down these roads on our last visit, I found myself wondering how many of those roads are private and if their use ever leads to access disputes. My family may have fallen asleep during these fascinating musings, but in the world of real property, they are important considerations with potentially costly implications.

The most common access issue that I have seen in claims is the neighbor dispute. Typically, this is where one neighbor places something (most commonly their truck) across the access easement and tries to stop the other neighbor from using that easement to get to their property. From the claims perspective, this is known as a post-policy trespass, and it is likely not covered because, despite the presence of the truck, the insured still has legal access to their property.

Suppose, though, that instead of a truck and bad language, the neighbor is using a lawsuit to challenge the existence of the easement. Assuming that the plaintiff is arguing that the easement was not valid on the date of the policy and that the specific easement is insured under the policy, this will likely trigger coverage. What that coverage will look like, though, is very specific to each individual set of facts. For example, whether or not there is other access to the property is an important consideration. It might be bumpy, inhospitable access that requires a longer drive through harsh terrain, but it is access nonetheless. In that situation, the loss might be measured using a diminution in value analysis, which involves a determination of the value of the property with the easement as compared with the value of the property without the easement. The loss is valuated as that difference in value.

It is also important to remember that, if a complaint has been filed and the insurer is providing a defense, resolution will take time. An insured owner needs to be prepared for, even when all parties work as diligently as possible, the wheels of litigation to grind slowly, which can be frustrating.

Next, imagine that the access easement is not specifically insured. There is coverage in the policy for legal access. For example, the 2006 ALTA Owners Policy insures against "[n]o right of access to and from the Land." If, as of the date of the policy, the parcel is truly landlocked, the policy provides coverage and the insurer will work to obtain legal access for the insured.

What constitutes "legal access" is very parcel-specific. To provide a more universal definition, it is easier to explain what "legal access" does not constitute. Legal access is not a specific route chosen by the insured; it is not the clearest route or the shortest distance to the property. It may be unpaved, it may be winding and inconvenient, and it may require expensive tree removal and pothole repairs, but, if it gets you there, it is legal access.

In addition, if an insured owns two or more adjacent parcels and one of the parcels directly abuts a public road, the adjacent parcels have road access by virtue of the common ownership. The insured should consider that this may have zoning or use implications that are not covered under the title insurance policy. Please note that, in this example, the parcel directly abuts a public road. This may not apply in situations where the parcel has some other type of legal access (i.e. by grant of an easement).

A person buying property without public road frontage must be aware of possible issues and the specific coverage to expect, if an issue does arise. Hopefully, none of your clients will ever leave their house to find their neighbor's truck parked across their drive, but, if they do, and you have discussed access with them, at least they will know what to expect.

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