

1 H.272

2 Introduced by Representatives Botzow of Pownal and Marcotte of Coventry

3 Referred to Committee on

4 Date:

5 Subject: Highways; private roads; road maintenance; cost allocation; banking;
6 mortgages

7 Statement of purpose: This bill proposes to:

8 (1) require that in the absence of a written agreement regarding the
9 allocation of maintenance costs for a private road, the costs shall be divided
10 ratably among the owners of property that utilize a private road for access and
11 the holders of recorded easements with a right to use the private road for
12 access; and

13 (2) authorize recovery of damages and injunctive relief by owners or
14 easement holders damaged by another's failure to contribute ratably to
15 maintenance costs.

16 An act relating to maintenance of private roads

17 It is hereby enacted by the General Assembly of the State of Vermont:

18 Sec. 1. LEGISLATIVE FINDINGS

19 The general assembly finds that:

1 (1) Fannie Mae (the Federal National Mortgage Association) is both a
2 major purchaser of residential mortgage loans on the secondary market and an
3 organization that sets the standards for the underwriting and legal requirements
4 for loans sold on the secondary market.

5 (2) The current Fannie Mae appraisal form contains a section for the
6 appraiser to comment on off-site improvements—including private streets—
7 and to indicate whether the improvements are publicly or privately maintained.
8 If a property is located on a community-owned or privately owned and
9 maintained street, Fannie Mae requires a legally enforceable agreement or
10 covenant for maintenance of the street.

11 (3) On January 31, 2008, Fannie Mae issued Announcement 08-01,
12 which specifies that Fannie Mae will permit the delivery of mortgage loans for
13 properties for which there is no such maintenance agreement or covenant,
14 provided that the property is located in a state that has statutory provisions
15 defining the responsibilities of property owners for the maintenance and repair
16 of private streets. Prior to this act, Vermont had no such statutory provisions.

17 (4) Since the mortgage crisis, Fannie Mae has become stricter in its
18 underwriting standards and in enforcing the private street maintenance
19 agreement requirement. Because the ability to sell mortgages to Fannie Mae
20 on the secondary market is critical to most mortgage lenders, this has delayed

1 mortgage closings and created uncertainty for Vermont homeowners
2 throughout the state.

3 (5) When a conflict arises among persons who share a private road but
4 lack an express agreement concerning the maintenance of that road, the
5 Vermont Supreme Court has applied common law equitable principles to
6 apportion the cost of maintaining the private road. In the reported decision
7 Hubbard v. Bolieau, 144 Vt. 373 (1984), the Supreme Court held that “when
8 several persons enjoy a common benefit, all must contribute rateably to the
9 discharge of the burdens incident to the existence of the benefit.”

10 (6) Vermonters have a long history of working together to share the
11 costs of maintaining private roads. Nothing in this act disturbs existing
12 cooperative arrangements between neighbors, whether written or unwritten.
13 Instead, this act establishes a default standard that will facilitate sales of
14 mortgages and reduce uncertainty for Vermont homeowners, apply only in the
15 absence of a written agreement, and rely on established principles of Vermont
16 law to resolve conflicts.

17 Sec. 2. 19 V.S.A. chapter 27 is added to read:

18 CHAPTER 27. PRIVATE ROADS

19 § 2701. DEFINITIONS

20 As used in this chapter:

1 (1) “Maintenance” shall include activities related to the upkeep of a
2 private road in its existing condition and as necessary to allow safe passage on
3 the private road within its existing scope of use. “Maintenance” shall not be
4 construed to include any expansion of or capital improvements to a private
5 road.

6 (2) “Owner” and “holder” mean a person other than the state of
7 Vermont, its instrumentalities, or a municipality.

8 (3) “Private road” means a road owned by one or more persons and used
9 by more than one owner or holder of a recorded easement as a means of access
10 to one or more parcels of land.

11 (4) “Ratably” means payment of the expenses for maintenance of a
12 private road based on a pro rata share among the owners and easement holders.

13 § 2702. PRIVATE ROAD MAINTENANCE

14 In the absence of any written agreement—including obligations established
15 by covenants and requirements contained in deeds, state and local permits, and
16 land development and subdivision bylaws—regarding the allocation of costs
17 for the maintenance of a private road, the owners of property that utilize a
18 private road for access and the holders of recorded easements with a right to
19 use a private road for access shall contribute ratably to the payment of the
20 expenses for maintenance of the private road on account of the common
21 benefit enjoyed by each owner and easement holder.

1 § 2703. ENFORCEMENT

2 If an owner or easement holder fails to pay after demand his or her ratable
3 share of maintenance costs as required under section 2702 of this chapter, an
4 owner or easement holder who suffers damage as a result may bring an action
5 in the civil division of a superior court where the private road is located for
6 damages or injunctive relief or both.

7 Sec. 3. EFFECTIVE DATE

8 This act shall take effect on July 1, 2011.