

County roads: What you need to know

We continuously receive phone calls asking us to pave or gravel a county road that we didn't know existed. Some of them are on our road list but haven't been maintained in years. We are also getting calls to remove roads from our road list that we are maintaining. Not only are these calls from our residents, we are also getting calls from people from North Carolina, New York and other places who are buying up properties so that they can have a vacation home in the country.

Counties should review their county road list on a regular basis, whether that be yearly, biennially or some other regular time period.

Leaving roads in the county system, but not maintaining them, has led to claims and suits against county governments. These claims and suits have varied from vehicle damage, to road removal, and to actions to stop the removal of a particular road while requiring regular road maintenance.

Vehicle damage claims are fairly obvious.

An individual drives their vehicle on a county road that has not been maintained or has been maintained sporadically at best, resulting in vehicle damage or an accident. The individual then shows that the lack of road maintenance is directly related to the vehicle damage. In this situation, the county may be on the hook for the damage, and if that lack of maintenance led to an accident resulting in injury or death, the claim becomes much more problematic.

Individuals wanting roads off the county road map seems like an oddity, but it does occur.

One real life example involved a New York resident buying property so his family could live the Green Acres life a few months per year. This individual then gated off the road that ran through his new property. That road led to land that local residents had hunted

on for years. Those residents wanted the gate taken down, but the county could not find any record indicating when the road had been legally taken into the system despite prior maintenance.

In the above example, the parties were able to work out a deal and avoided litigation.

However, similar situations have occurred when counties have lost cases where the county had a road on the county road list but no paper trail showing its adoption.

The paper trail is a necessity as fiscal courts are courts of record (see KRS 67.100). Proof of county maintenance is not enough. Not having the appropriate records could result in someone's favorite hunting land being cut off from use.

Last, at least for this article's scope, are claims and potential claims against counties where individuals have relied on a road being on the county road list when purchasing real property.

A couple of years ago, a North Carolinian placed an option on acreage in eastern Kentucky to be used as vacation rental property. This individual never visited the property and conducted the transaction based upon his own research, which included a paper trail that the property was accessible via a county road.

This old logging property hadn't been logged or used in several years. The road accessing the property had also not been maintained in years, despite being in the road plan, and was no longer accessible by vehicle.

During a visit with the county judge/executive, the judge stated that he had just become aware that this individual was getting ready to finalize this land purchase and questioned whether the county would have to maintain the road. The judge ended up calling the purchaser to let him know that the



road was not passable and that the county was going to start the process to take the road out of the county road system at the next fiscal court meeting.

The judge followed up the telephone call with a letter.

In the above situation, litigation was not filed, and the proposed buyer had the opportunity to back out of the purchase or make the purchase knowing the facts.

However, if he had made the purchase relying upon the road being in the county road system, yet not knowing that the road was impassable, he could have filed suit. That claim would have likely failed as he had the opportunity to view the road, or to have someone view the road for him, and chose not to take that step. In addition, the county may have had a governmental immunity defense. However, the best defense to litigation is to not get sued.

Bottom line: Review your county road list periodically. Take out those roads that should not be on the list anymore. Things change.

The reason that a road was put into the system 50 years ago may not exist today. A through road in 1965 may be a dead end road now that only serves one property owner.

If that road no longer serves a public purpose, it should not be on the county road list. Get with your county attorney and your road supervisor/engineer

for guidance and assistance. Use KRS 178.070 and KRS 178.116 to get the road off the county road list.

Next, figure out which roads the county maintains but may have never been formally adopted into the system. Make sure that these roads meet both the statutory and local requirements and then adopt these roads into the system or cease maintenance.

Creating and updating that paper trail can minimize future litigation while creating a stronger county road system.

Call 800-264-5226 or email me at rich.ornstein@kaco.org if you have questions regarding this or any other matter. And if you have suggestions for other items that you'd like me to cover in County Line, let me know.

Legally Yours,

Rich



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