

Understanding Road Access

By **Tom Brickman** on July 19, 2013

Many people ask us what the consequence is when a property they have an interest in buying does not touch on a public road (in Alabama, many properties fall into this category).

In other words, when the only access to a property from the nearest public road (that is, a road maintained by federal, state or county government) is a private road that crosses adjoining private landowners. Or, there is no road at all to the property.

As a practical matter, access falls into three broad categories: one is public access, one is private un-deeded access and one is private deeded access.

Public access is the least complicated. It touches a government maintained road or it doesn't. If it does, you don't have to cross anyone else to get to your property.

The other two are more complicated. But even un-deeded may not actually be a problem – depending on the intended use.

What does un-deeded mean?

Un-deeded access means that your use of a road across an adjoining landowner to get to your property is not governed by a written document (or, there is no road at all). This is commonly called a “landlocked” property. Often, the road has been used for decades, is well established and it's use uncontested. But a written agreement was never negotiated with the neighbor.

When an access is “deeded”, there is a written agreement with the adjoining landowners over whom the road traverses that governs use of the road. It's typically recorded in the court house.

Does it matter?

Our experience is that for some uses of the land, un-deeded access is usually not a problem since use of the road can go back several generations. But from time to time

these situations can be problematic since the adjoining landowner is not bound by any written agreement.

The state of Alabama has a law that says you can't "land lock" your neighbor. That is, deny them physical access. But this does not mean they have to give you a written easement, and it does not mean they have to let you string power lines or run water lines across their property.

Un-deeded access can be a problem when borrowed capital is used to buy land. Lenders often will not lend money when the intended security interest is "land locked".

That depends on intended use.

If you are looking at Alabama land for sale that does not touch on a public road, then how you intend to use the property is key to understanding the issue. For example, if you intend to build a house and will need water and utilities, then having "deeded access" will be critical. You'll have to negotiate these things with your neighbor.

On the other hand, if you are buying hunting land or want to grow timber and 4-wheel with the kids, our experience is the risk is small you'll have a problem with a neighbor when the access road is well established and it's use has not been a point of contention with the neighbor.

In general, the more landowners who use an un-deeded access road to get to their property, the less likely there will be trouble with the adjoining landowner.

How can Cyprus Partners help with deeded access?

If having deeded access is critical to your purchase, the best way to proceed is to negotiate a contract with the seller of the "land locked" property that contains a contingency ([click here](#) to learn more about contingencies) for successfully negotiating a written access agreement with the adjoining landowners. This way if you can't resolve the issue to your satisfaction you'll get your deposit back. And meanwhile, you have the property tied up so it can't sell before you have a chance to solve the issue.

Cyprus Partners has connections with local attorneys with experience in deeded access cases (see list below). We can help you get in touch with the right firm for your needs, and move you towards purchasing the land of your dreams. It may cost you some money to get the deeded access (payment to adjoining landowner, survey cost, attorney fees, recording fees) but it is money well spent.