

# THE COMMUNITY BUILDER

## Zoning, Legal Descriptions and More

Dear Board Members:

Do you know how your common areas are determined? Don't feel alone as most Board members and owners do not. Through the years working with associations and boards I have found common areas and common elements tend to derive historically over time and/or by word-of-mouth. There is, however, a much more scientific and specific method by which they are determined and documented.

In the beginning, there is raw land. The planning process by which raw land becomes developed land ready for construction is generally about a two year process. There are many people involved with this process including the municipality (City, County, Other) where the project is to be built. Most of the time, it is through planning and zoning and land use rules that communities are required to have certain amounts of open, green space; recreational areas, storm water management detention or retention ponds, and the dedication of common areas or in the case of condominiums, common elements.

### What is a Plat?

A plat consists of a map, drawn to scale, showing the divisions of a piece of land. City, town or village plats show subdivisions in blocks with streets and alleys. Further refinement often splits blocks into individual lots, usually for the purpose of selling the described lots; this has become known as subdivision. After the filing of a plat, legal descriptions can refer to block and lot numbers, rather than a portion of a "section". In order for plats to become legally valid, a local governing body, such as a public works department, urban planning commission, or zoning board must normally review and approve them and further be approved by the county commissioners or city council.

A plat of a subdivision appears when a landowner or a municipality divides land into smaller parcels. If a landowner owns an acre of land, for instance, and wants to divide it into three pieces, a surveyor would have to take precise measurements of the land and submit the survey to the governing body, which would then have to approve it. A plat of a subdivision also applies when a landowner/building owner divides a multi-family building into multiple units. This applies when the intent is to sell the units as condominiums.

# THE COMMUNITY BUILDER

Reasons for platting can be:

Designation of roads or other rights of way; ensuring that all property has access to a public right of way. Without such access, a property owner may be unable to utilize his or her property without having to trespass to reach it. The platting process restricts the fraudulent practice of knowingly selling lots with no access to public right of way; creation of or vacation of easements; dedication of land for other public uses, such as parks or areas needed for flood protection; ensuring compliance with zoning. Zoning regulations frequently contain restrictions that govern lot sizes and lot geometry.

The platting process allows governing authorities to ensure that all lots comply with these regulations, ensuring compliance with a land use plan established to control the development of a city and ensuring that all property has access to public utilities.

Common Area is defined as property that is to be owned and maintained by the entity being created by the developer. That entity is the Association. These areas are generally notated on the "Plat" as tracts. The tracts are labeled as, for example, Tract A, Tract B, etc. Only these areas are the true "common area". These tracts are then identified with legal descriptions that are contained as a part of your documents as "exhibits". These tracts may be owned by the Developer until the community is completed, when by deed and only by conveyance through a deed, is the property ownership transferred from the Developer to the Association. Even though the property may be owned initially by the Developer generally the plat and the documents will require the maintenance of the common areas to be that of the Association. This applies to homeowners associations, property owners associations, or community owners associations as common areas in a condominium are referred to as common elements. The method of ownership is different.

In a homeowners, property owners, or community association, common areas are owned by the corporation. Owners are members of the corporation, but do not own any shares in the property. In a condominium, the property and common elements are owned in undivided shares by the owners.

# THE COMMUNITY BUILDER

In condominiums, while the initial development process is very similar, the documents through exhibits to the documents, provide the specificity that identifies both common elements and limited common elements and the declaration will further clarify the responsibilities of maintenance by the Association and the unit owner.

Many questions can be answered as to who owns what and specifically what the Association is required to maintain by going back to the plat. This information is contained in the "dedications" that are made on the side of the plat. This simple step can save money, time and effort when questions come up. This is one reason that having the plats is important as part of the official records of the association; and one reason Sentry always pulls copies from the county records as part of the set up process of the association.

Looking at a plat can determine how much of a lot an owner owns and where the common area abuts that lot. It will denote easements for drainage, for utilities, for access for maintenance to ponds, lakes, conservation areas. It will denote where landscape easements are located on perimeter boundaries of communities. It will also denote where Rights of Way are, and even if that right of way is to be maintained by the Association but owned by the county, city or other municipality. It will also show a great amount of detail regarding the infrastructure development - where storm water pipes and outfalls are; where sewer or water connections are made. It is the blueprint by which your community was started.

The documents pick up the legal descriptions (generally as exhibits to the documents) of the common areas and any time reference is made to common areas - it is referring to what is legally determined to be common area. A plat is a legal picture of the development and the intent of the developer and the municipality where the community is located. And, you know what they say..."A picture is worth a thousand words".