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20080222000073130 1/4 \$20.00
Shelby Cnty Judge of Probate, AL
02/22/2008 02:42:39PM FILED/CERT

Date: February 11th, 2008

To: Judge of Probate
Shelby County, Alabama
P.O. Box 825
Columbiana, Alabama 35051

RE: Plat Vacation per State Code Section 35-2-53 and 35-2-57
Lake Archer - First Sector, City of Chelsea, Alabama
Recorded in Map Book 38, Page 59 in the Office of the
Judge of Probate, Shelby County, Alabama

To whom it may concern,

I wish to thank you personally for your time and consideration in this request for plat vacation.

The subdivision plat known as Lake Archer - Sector One as recorded in map book 38, page 59 in the office of the Judge of Probate, Shelby County, Alabama was improperly executed. According to the Code of Alabama Statute Title 35, Chapter 2, Article 3, Section 35-2-51, the proper certification and notarization of the plat is required for the instrument to be valid. Upon inspection of the recorded plat, the notarization of the mortgagee improperly certifies the owner, Wayne Archer as the mortgagee instead of M&F Bank. This improper certification makes the current recording invalid and must be vacated per State law. Only the current recording of the plat itself is invalid, not the approval of the subdivision to exist by the City of Chelsea planning commission. Since none of the lots have been sold at this date, vacation of the current recording will not harm or interfere with any individual, separate lot mortgage, or separate land owners that do not yet exist. Furthermore, payment for our services have not been received for the work or for the plat, therefore we still retain possession and legal ownership of said plat. It is our intent to re-release the plat to the mortgage company listed on the plat, M&F bank, once our payment for services are received so the plat can be properly executed and re-recorded. Therefore, per Section 35-2-53 and 57 of the State Code, we are formally requesting the vacation of the current recording of said plat to protect our interest, to protect the city and it's representatives from grievances filed by future owners and lenders of the lots, and to protect the profession of land surveying in the State of Alabama. Please also find attached a letter of notice sent to the owner and to the mortgagee, M&F Bank regarding this matter.

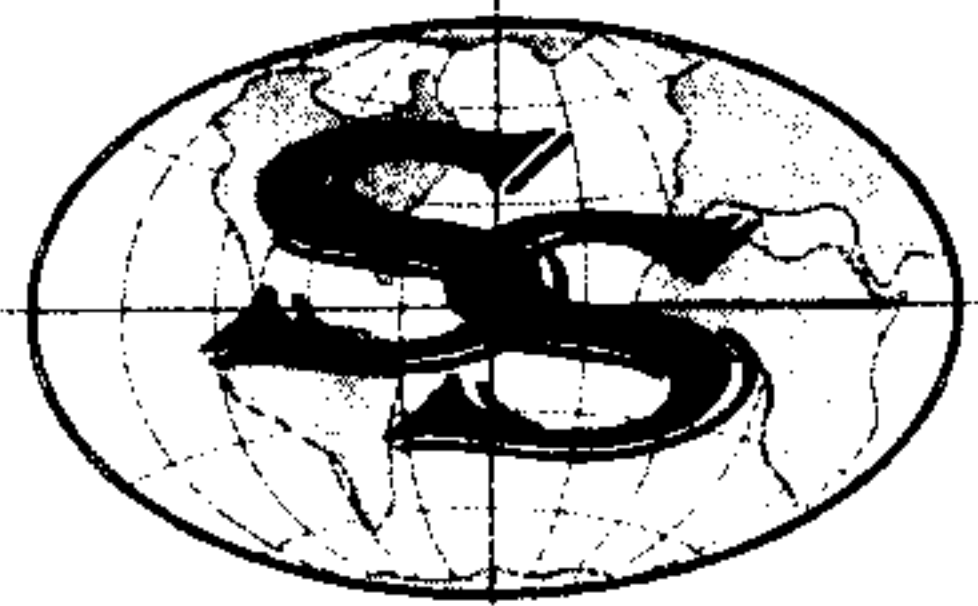
Your prompt assistance and execution of plat vacation is greatly appreciated.

Sincerely,

Thomas E. Simmons II
Simmons Surveying of Pinson Alabama

cc:

File
Nelson Wayne Archer
David Nolen - M&F Bank
Chet Engle (Ethan and Associates)
Charlie Beavers, attorney (Bradley, Rose, and White)
John Debuys, attorney (Burr and Forman)
Hon. Earl Niven (Mayor of the City of Chelsea)
Mike Atchison (Shelby County Abstract)



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Date: February 11th, 2008

To: Mr. David Nolen - Financial Lending Officer
M&F Bank - Mortgagee
P.O. Box 997
Columbiana, Alabama 35051-0977
1-800-379-5465

RE: Lake Archer Subdivision - Residential Development
Nelson Wayne Archer - Owner and Developer
Located in Sections 7 and 18, Township 20 South, Range 1 East
City of Chelsea, Shelby County, Alabama

Mr. Nolen,

As of November 30th 2007, as outlined in our services contract, we proceeded to take action to collect the outstanding debts owed by Mr. Nelson Wayne Archer for the project known as Lake Archer Subdivision and authorized Ethan and Associates of Mandeville, Louisiana to act on our behalf. Since that time Ethan and Associates have been unable to collect on the monies owed forcing us to pursue our collection in the courts. Upon the collection of evidence, we found that the original recording for the subdivision plat as recorded in map book 38 page 59 in the judge of probate office Shelby county Alabama, was improperly executed by the mortgagee. According to the Code of Alabama Statute Title 35, Chapter 2, Article 3, Section 35-2-51, the instrument was improperly executed and thus the current recording of the subdivision plat in map book 38 page 59 is invalid. As the subdivision plat is invalid the subsequent subdivision of lands shown thereon is also invalid, thus retaining the lands as a single contiguous non-divided tract. Since payment for services has not been satisfied we currently retain ownership and possession of the original plat required to re-record the instrument once properly executed.

Pursuant to advisement from legal council we are sending notice of these facts and of our intent to secure our legal position to the client, Mr. Nelson Wayne Archer, and to those who have interest in this development. This letter is being directed to M&F Bank with respect to Lake Archer due to its position as official and documented financier of this development. As mortgagee, your investment in this project becomes considerably less profitable without the existence of a subdivision on said lands. Thus why we agreed to release the final plat for Sector One in February 2007 to be recorded on the good faith final payment would be made in the timely manner prescribed by our contract and by Law. As of this date, these monies have not yet been paid.

Per our contact with Mr. Archer we have been notified of the intent to dispense of the property via land auction to settle debts owed to the bank without regard to securing monies owed to us. Under Title 11, Chapter 52, Sections 11-52-1, 11-52-31 and 11-52-33 of the State Code, it is illegal to sell or offer to sell any tract, lot, etc of divided land without said lands being properly subdivided, therefore making the sell of individual lots a violation of State Law. Since Mr Archer and M&F Bank is aware that we, Simmons Surveying, have not been fully compensated for the labor and expenses incurred on this project, it constitutes as an unjust enrichment of both Mr. Archer and M&F Bank by our work and at our expense.

Be advised we intend to fully pursue every legal means possible to secure our financial interest in this matter. Without the subdivision plat, the land remains one continuous tract that, under State Law, must be sold as one. Without payment of the debts owed to us on this project, the record plat will not be re-released. Failure to pay these debts has dissolved any good-faith relationship we had in the past and therefore we now require payment in full before the map is re-released.

Our contract being valid and open we continue to be the surveyor of record for the real property known as Lake Archer. Per the Professional Board of Engineers and Land surveyors Law and Administrative code 330-X-14-.04 subsection (d), authorized under Title 34, Chapter 11 of the State code, it is illegal for any professional land surveyor to engage or perform any work on this property without our written release. Furthermore, if our debts have not been satisfied by the end of 10 days from the date of this letter, we intend to file liens on this property that will withhold clear title and complicate any attempt to sell the property. In addition to this, we also will file suit against Mr. Archer and against anyone responsible for the withholding of funds has cost our company financial loss. We will also notify all the regulating Boards of the State of Alabama of the violation of State Law if any attempt is made to sell or offer to sell this development as a subdivision without first properly executing the plat. A copy of this letter along with a formal request to condemn the first recording of the plat for Lake Archer as currently recorded has been sent the mayor of the City of Chelsea Alabama and to the Judge of Probate of Shelby County Alabama.

We require that Mr. Archer or the financier contact Mr. Chet Engle with Ethan and Associates to settle the debts owed within 10 days of the date of this letter. At which time we will re-release the plat when full compensation or remuneration has been received by said collector. Mr Engle can be contacted by phone at 1-888-830-3170, Ext 101.

Your immediate attention and action is appreciated in this matter.

Sincerely,



Thomas E. Simmons II
Simmons Surveying of Pinson Alabama

cc:

File
Nelson Wayne Archer
Chet Engle (Ethan and Associates)
Charlie Beavers, attorney (Bradley, Rose, and White)
John Debuys, attorney (Burr and Forman)
Hon. Earl Niven (Mayor of the City of Chelea)
Hon. Judge of Probate - Shelby County Alabama
Mike Atchison (Shelby County Abstract)





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Date: February 11th, 2008

To: Hon. Earl Niven
Mayor
City of Chelsea, Alabama
P.O. Box 111
Chelsea, Alabama 35043

RE: Plat Vacation per State Code Section 35-2-53 and 35-2-57
Lake Archer - First Sector, City of Chelsea, Alabama
Recorded in Map Book 38, Page 59 in the Office of the
Judge of Probate, Shelby County, Alabama

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