



Developers: If you want a road to be private, so say in the plat.

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The Kentucky Court of Appeals just issued an opinion on April 13, 2012, hammering home the strict requirements imposed on developers that must be met in order to make a subdivision street private (as opposed to a public road). In short, the difference between a private road and public road is that the general public enjoys the right to access and travel across a public road whereas a private road's use may be restricted to a select group of persons (e.g., the residents of a subdivision).

In *Carrier, et al. v. Kirchheimer, et al.*, --- S.W.3d ----, 2012 WL 1232940, (Ky.App. 2012), the Court of Appeals stated that if a developer records a subdivision plat containing streets, alleys, parks and other open spaces, then such features shall be treated as public unless they are expressly described as private on the plat. The Court went on to emphasize that "the subjective intent of the [developer] is immaterial" and apparently gave no weight to the developer and homeowners' testimony that the particular street at issue in that case was intended to be a private road.

The upshot of the *Carrier* decision is clear: If a developer intends for a subdivision street (or park) to be restricted for the private use of subdivision residents (or otherwise restricted from the public), then that developer should expressly state this intention in the recorded subdivision plat in unmistakable and precise terms.

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