

Subject: Sidewalk issue  
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From: SGealy@baylorevnen.com  
To: cgreen9813@aol.com, mueller@muellerrobak.com

*Sidewalk Covenant  
Review by DaNay  
Kalkowski*

Chuck and Bill:

For purposes of "the record" I will summarize here my recent discussion with DaNay Kalkowski. As you know, I retained DaNay on behalf of the HOA to review the issue of whether the sidewalks outside the common areas of the development belong to the individual homeowners or to the HOA. DaNay seemed to be the logical resource for this issue since she drafted our restrictive covenants when the development was in the planning stages. In my effort to keep the cost down for the HOA I did not ask DaNay to prepare a written opinion. I will therefore summarize here the conclusions she articulated to me.

In DaNay's opinion the sidewalks adjacent to private lots **are not** included in the description of common facilities contained in the covenants. Even though such sidewalks may technically be part of Outlot "A", when the covenants were drafted it was assumed that sidewalks adjacent to private lots would be treated in the same manner as are sidewalks which parallel public streets in other subdivisions. DaNay does not see any language in the covenants as they exist which would either require or allow the HOA to repair sidewalks and bill homeowners for the associated cost. She does, however, believe that maintenance of the sidewalks adjacent to private lots is the responsibility of individual homeowners.

That said, if the HOA has neither the obligation nor the authority to repair sidewalks, there can be no legitimate claim stated against the HOA in the event of an injury which allegedly results from a claimed sidewalk defect. Any claim for such an injury would necessarily be made against the individual owner of the lot on which the sidewalk is located and the defense of such claim would be financed either by the homeowner's liability insurer or, in the absence of such coverage, by the homeowner individually.

I believe this email adequately summarizes my conversation with DaNay and my interpretation of her opinion. If either of you has questions or comments, please call me at your convenience.  
Steve

**Stephen S. Gealy**

Attorney at Law  
Union Bank Place  
1248 O St., Ste. 900  
Lincoln, NE 68508  
Phone 402.475.1075  
Direct 402.458.2107  
Fax 402.475.9515

**BaylorEvnen.com**

[sgealy@BaylorEvnen.com](mailto:sgealy@BaylorEvnen.com)



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