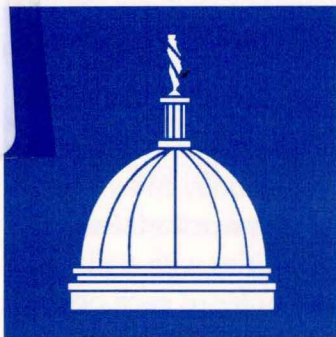


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# Iowa's Subdivision Law Explained

## Chapter 354 of the *Iowa Code*

As early as 1873, the Iowa Code contained strict provisions regarding the subdivision of land. Early state leaders realized the importance of regulating subdivision activity to provide for orderly growth and development and to protect the public interest. The Seventy-third Iowa General Assembly rewrote portions of the Code that deal with the surveying and subdivision of land. These new provisions were contained in House File 724 which became effective July 1, 1990.

### The 1990 changes in the law:

- Repealed the previous authority for subdivision regulation (Chapter 409) and created a new chapter (now Chapter 354) giving both cities and counties explicit authority to adopt subdivision regulations,
- Repealed sections of the code dealing with the surveying of land and created a new chapter (now Chapter 354) that contains in one place all of the standards and procedures for land surveying,
- Offered a clearer statement of the public purpose served by the regulation of subdivi-

sion activity ("It is the purpose of this Chapter to provide for a balance between the review and regulation authority of governmental agencies concerning the division and subdivision of land and the rights of land-owners."—354.1), and

- Encouraged intergovernmental cooperation (354.9.2) and the regulation of subdivision activity so that it is consistent with the planned expansion of public services and utilities and with the locally approved comprehensive plan (354.4).

With the passage of H.F. 724, several long-standing problems were eliminated.

1. The old Chapter 409 contained a confusing and outdated definition of what constituted a land subdivision (409.1).
2. The old Chapter 409 did not give counties explicit authority to regulate land subdivisions.
3. The list of improvements that could be required was limited to streets, alleys, sidewalks, and utilities and made no provision for such things as storm water systems,

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## Introduction

the prevention of erosion, the protection of native trees, other conservation measures, or off-site improvements.

4. Under the old chapter, extraterritorial subdivision review was arbitrary and inconsistent.

5. Standards and procedures for the surveying of land were confusing and obsolete.

6. The provisions for right-of-way conveyances to the Iowa Department of Transportation or to other jurisdictions were not well laid out.

Although the passage of H.F. 724 also impacts the procedures for the surveying of land, this publication is aimed at explaining the portions of the new law which pertain to land subdivision activity. The new chapter allows both cities and counties to adopt ordinances dealing with the subdivision of land.

Another main provision of the new law allows cities with subdivision ordinances to extend

their review jurisdiction up to two miles outside of their boundaries. To accomplish such an extraterritorial extension, cities must adopt a separate ordinance. Where two or more review jurisdictions overlap, such as the case where a county has subdivision regulations and a city within that county has an extraterritorial subdivision ordinance, or where cities with such ordinances are within four miles of each other, all the parties have the right to review the plats. In such cases, the law allows for intergovernmental cooperation. The parties are encouraged to formulate an agreement as to the standards and conditions for review. Such agreements are to be made in accordance with Chapter 28E of the Iowa Code. If no agreement exists among neighboring cities, the city closest to the property has review power.

The new law also broadens the standards and conditions for approval to include consideration of all aspects of an existing comprehensive plan. In addition, it provides enforcement procedures for failure to submit a subdivision plat.

## Explanation

### 354.1 Statement of purpose

The stated purposes of this law are:

1. To standardize methods of description for real estate to prevent boundary and title problems.
2. To balance landowners' rights and public concerns in setting up and enforcing rules concerning land uses.
3. To set uniform rules concerning platting of land and clearly set the scope of powers for both cities and counties to set up land use rules.

## Legislation

### 354.1 STATEMENT OF PURPOSE.

It is the purpose of this chapter to provide for a balance between the review and regulation authority of governmental agencies concerning the division and subdivision of land and the rights of landowners. It is therefore determined to be in the public interest:

1. To provide for accurate, clear, and concise legal descriptions of real estate in order to prevent, wherever possible, land boundary disputes or real estate title problems.
2. To provide for a balance between the land use rights of individual landowners and the economic, social, and environmental concerns of the public when a city or county is developing or enforcing land use regulations.
3. To provide for statewide, uniform procedures and standards for the platting of land while allowing the widest possible latitude for cities and counties to establish and enforce ordinances regulating the division and use of land, within the scope of, but not limited to, chapters 331, 354, 358A, 364, and 414.



## Legislation

4. To encourage orderly community development and provide for the regulation and control of the extension of public improvements, public services, and utilities, the improvement of land, and the design of subdivisions, consistent with an approved comprehensive plan or other specific community plans, if any.

### 354.2 DEFINITIONS.

As used by this chapter, unless the context clearly indicates otherwise:

1. "Acquisition plat" means the graphical representation of the division of land or rights in land, created as the result of a conveyance or condemnation for right-of-way purposes by an agency of the government or other persons having the power of eminent domain.

2. "Aliquot part" means a fractional part of a section within the United States public land survey system. Only the fractional parts one-half, one-quarter, one-half of one-quarter, or one-quarter of one-quarter shall be considered an aliquot part of a section.

3. "Auditor's plat" means a subdivision plat required by either the auditor or the assessor, prepared by a surveyor under the direction of the auditor.

4. "Conveyance" means an instrument filed with a recorder as evidence of the transfer of title to land, including any form of deed or contract.

5. "Division" means dividing a tract or parcel of land into two parcels of land by conveyance or for tax purposes. The conveyance of an easement, other than a public highway easement, shall not be considered a division for the purpose of this chapter.

6. "Forty-acre aliquot part" means one-quarter of one-quarter of a section.

7. "Governing body" means a city council or the board of supervisors, within whose jurisdiction the land is located, which has adopted ordinances regulating the division of land.

8. "Government lot" means a tract, within a section, which is normally described by a lot number as represented and identified on the township plat of the United States public land survey system.

9. "Lot" means a tract of land represented and identified by number or letter designation on an official plat.

10. "Metes and bounds description" means a description of land that uses distances and angles, uses distances and bearings, or describes the boundaries of the parcel by reference to physical features of the land.

11. "Official plat" means either an auditor's plat or a subdivision plat that meets the requirements of this chapter and has been filed for record in the offices of the recorder, auditor, and assessor.

12. "Parcel" means a part of a tract of land.

13. "Permanent real estate index number" means a unique number or combination of numbers assigned to a parcel of land pursuant to section 441.29.

## Explanation

4. To insure that development conforms to the spirit of a comprehensive or overall community plan.

### 354.2 Definitions

Note that to meet the definition of a "governing body," the board of supervisors or the city council must have adopted a subdivision ordinance. In this publication, the terms "government" and "local government" also are used, but, to take advantage of any of the powers conferred by 354, a subdivision ordinance is required.



**354.3 Covenant of Warranty**

Whenever a person divides a parcel of land he or she must guarantee free title to that land. The description used to divide the land must be clear enough to be used for both tax and boundary purposes. If any transfer violates these rules, the auditor must notify both parties and enforce compliance according to 354.13

**354.4 Divisions Requiring a Plat of Survey or Acquisition Plat**

1. Whenever a parcel of land is divided using a surveyor's descriptions, a plat of survey must be filed with the auditor unless the land is being acquired by eminent domain. The auditor must be contacted to determine whether it should contain only the parcel being separated or include the parcel remaining. The plat of survey must be prepared to the new standards for surveying in 114A. It must be clearly marked by the surveyor as a plat of survey and include:

14. "Plat of survey" means the graphical representation of a survey of one or more parcels of land, including a complete and accurate description of each parcel within the plat, prepared by a registered land surveyor.

15. "Proprietor" means a person who has a recorded interest in land, including a person selling or buying land pursuant to a contract, but excluding persons holding a mortgage, easement, or lien interest.

16. "Subdivision" means a tract of land divided into three or more lots.

17. "Subdivision plat" means the graphical representation of the subdivision of land, prepared by a registered land surveyor, having a number or letter designation for each lot within the plat and a succinct name or title that is unique for the county where the land is located.

18. "Surveyor" means a registered land surveyor who engages in the practice of land surveying pursuant to chapter 114.

19. "Tract" means an aliquot part of a section, a lot within an official plat, or a government lot.

**354.3 COVENANT OF WARRANTY.**

The duty to file for record a plat as provided in sections 354.4 and 354.6 attaches as a covenant of warranty in all conveyances by a grantor who divides land against all assessments, costs, and damages paid, lost, or incurred by a grantee or person claiming under a grantee, in consequence of the omission on the part of the grantor to file the plat. A conveyance of land is deemed to be a warranty that the description contained in the conveyance is sufficiently certain and accurate for the purposes of assessment, taxation, and entry on the transfer books and plat books required to be kept by the auditor. The description contained in a conveyance shall be sufficiently certain and accurate for assessment and taxation purposes if it provides sufficient information to allow all the boundaries to be accurately determined and does not overlap with or create a gap between adjoining land descriptions.

A recorded conveyance in violation of this chapter may be entered on the transfer books of the auditor's office. The auditor shall notify the grantor and the grantee that the conveyance is in violation of this chapter and demand compliance as provided for in section 354.13.

**354.4 DIVISIONS REQUIRING A PLAT OF SURVEY OR ACQUISITION PLAT.**

1. The grantor of land which has been divided using a metes and bounds description shall have a plat of survey made of the division, except as provided for in subsection 3. The grantor or the surveyor shall contact the county auditor who, for the purpose of assessment and taxation, shall review the division to determine whether the survey shall include only the parcel being conveyed or both the parcel being conveyed and the remaining parcel. The plat of survey shall be prepared in compliance with chapter 114A and shall be recorded. The plat shall be clearly marked by the surveyor as a plat of survey and shall include the following information for each parcel included in the survey:



## Legislation

- a. A parcel letter designation approved by the auditor.
- b. The names of the proprietors.
- c. An accurate description of each parcel.
- d. The total acreage of each parcel.
- e. The acreage of any portion lying within a public right-of-way.

2. The auditor may note a permanent real estate index number upon each parcel shown on a plat of survey according to section 441.29 for real estate tax administration purposes. The surveyor shall not assign parcel letters or prepare a metes and bounds description for any parcel shown on a plat of survey unless the parcel was surveyed by the surveyor in compliance with chapter 114A. Parcels within a plat of survey prepared pursuant to this section are subject to the regulations and ordinances of the governing body.

3. When land or rights in land are divided for right-of-way purposes by an agency of the government or other persons having the power of eminent domain and the description of the land or rights acquired is a metes and bounds description, then an acquisition plat shall be made and attached to the description when the acquisition instrument is recorded. Acquisition plats shall be clearly marked as an acquisition plat and shall conform to the following:

a. Acquisition plats shall not be required to conform to the provisions of chapter 114A.

b. The information shown on the plat shall be developed from instruments of record together with information developed by field measurements. The unadjusted error of field measurements shall not be greater than one in five thousand.

c. The plat shall be signed and dated by a surveyor, bear the surveyor's Iowa registration number and legible seal, and shall show a north arrow and bar scale.

d. The original drawing shall remain the property of the surveyor or the surveyor's agency and shall not be less than eight and one-half by eleven inches in size.

e. If the right-of-way on an acquisition plat is a portion of lots within an official plat, reference shall be made to both the lots and plat name. If the right-of-way acquisition plat is not within an official plat, reference shall be made to the government lot or quarter-quarter section and to the section, township, range, and county.

f. The plat shall indicate whether the monuments shown are existing monuments or monuments to be established. Monuments shall be established as necessary to construct or maintain the right-of-way project.

g. The acquisition plat shall identify the project for which the right-of-way was acquired and a parcel designation shall be assigned to each right-of-way parcel.

4. The acreage shown for each parcel included in a plat of survey or acquisition plat shall be to the nearest one-hundredth acre. If a parcel

## Explanation

- a. parcel letter designations,
  - b. the names of the owners,
  - c. accurate parcel descriptions,
  - d. parcel acreages,
  - e. acreage of any part lying in a public right-of-way.
2. The auditor may assign permanent real estate numbers to each parcel.

3. When a parcel of land is divided by the use of eminent domain the surveyor must file a plat of acquisition.

Next follows a list of technical requirements for this type of plat.

4. Additional technical requirements.



## Explanation

5. If a government divides a parcel again for right-of-way purposes it need not file a new plat.

### **354.5 Descriptions and Conveyance According to Plat of Survey or Acquisition Plat**

Descriptions and conveyance should use assigned information from these plats.

## Legislation

described as part of the United States public land survey system and not entirely within an official plat lies within more than one forty-acre aliquot part of a section, the acreage shall be shown only for assessment and taxation purposes for each portion of the parcel that lies within each forty-acre aliquot part. The surveyor shall not be required to establish the location of the forty-acre aliquot line by survey but is required to use reasonable assumptions in determining its approximate location for assessment and taxation purposes.

5. Governmental agencies shall not be required to survey a remaining parcel when land is divided for right-of-way purposes and shall not be required to contact the auditor for approval of parcel designations shown on an acquisition plat.

### **354.5 DESCRIPTIONS AND CONVEYANCE ACCORDING TO PLAT OF SURVEY OR ACQUISITION PLAT.**

1. A conveyance of a parcel shown on a recorded plat of survey shall describe the parcel by using the description provided on the plat of survey or by reference to the plat of survey, which reference shall include all of the following:

- a. The parcel letter or designation.
- b. The book and page number of the recorded plat of survey.
- c. The lot number or letter and name of the official plat, if the parcel lies within an official plat.
- d. The section, township, and range number and reference to the aliquot part of the section, if the parcel lies outside of an official plat.

2. A conveyance of a parcel shown on a recorded acquisition plat shall describe the parcel by using the description provided on the acquisition instrument or by reference to the acquisition plat, which reference shall include all of the following:

- a. The parcel designation and reference to the project for which the right-of-way was acquired.
- b. The book and page number of the recorded acquisition plat.
- c. The lot number or letter and name of the official plat, if the parcel lies within an official plat.
- d. The section, township, and range number and reference to the aliquot part of the section, if the parcel lies outside of an official plat.

3. A description by reference to the recorded plat of survey, in compliance with subsection 1, is valid.

4. A description by reference to the recorded acquisition plat, in compliance with subsection 2, is valid.

5. A description by reference to a permanent real estate index number is valid for the purpose of assessment and taxation when a county has established a permanent real estate index number system pursuant to section 441.29.



## Legislation

### 354.6 SUBDIVISION PLATS.

1. A subdivision plat shall be made when a tract of land is subdivided by repeated divisions or simultaneous division into three or more parcels, any of which are described by metes and bounds description for which no plat of survey is recorded. A subdivision plat is not required when land is divided by conveyance to a governmental agency for public improvements.

2. A subdivision plat shall have a succinct name or title that is unique, as approved by the auditor, for the county in which the plat lies. The plat shall include an accurate description of the land included in the subdivision and shall give reference to two section corners within the United States public land survey system in which the plat lies or, if the plat is a subdivision of any portion of an official plat, two established monuments within the official plat. Each lot within the plat shall be assigned a progressive number. Streets, alleys, parks, open areas, school property, other areas of public use, or areas within the plat that are set aside for future development shall be assigned a progressive letter and shall have the proposed use clearly designated. A strip of land shall not be reserved by the subdivider unless the land is of sufficient size and shape to be of practical use or service as determined by the governing body. Progressive block numbers or letters may be assigned to groups of lots separated from other lots by streets or other physical features of the land. The surveyor shall not assign lot numbers or letters to a lot shown within a subdivision plat unless the lot has been surveyed by the surveyor in compliance with chapter 114A. The auditor may note a permanent real estate index number upon each lot within a subdivision plat. Sufficient information, including dimensions and angles or bearings, shall be shown on the plat to accurately establish the boundaries of each lot, street, and easement. Easements necessary for the orderly development of the land within the plat shall be shown and the purpose of the easement shall be clearly stated.

3. If a subdivision plat, described as part of the United States public land survey system and not entirely within an official plat, lies within more than one forty-acre aliquot part of a section, the acreage shall be shown only for assessment and taxation purposes for the portion of the subdivision that lies within each forty-acre aliquot part of the section. The area of the irregular lots within the plat shall be shown and may be expressed in either acres, to the nearest one-hundredth acre, or square feet, to the nearest ten square feet. The surveyor shall not be required to establish the location of a forty-acre aliquot line by survey but is required to use reasonable assumptions in determining its approximate location for assessment and taxation purposes.

### 354.7 CONVEYANCES BY REFERENCE TO OFFICIAL PLAT.

A description of land by reference to lot number or letter designation and block, if block designations are shown on the plat, and the title or name of the official plat, is valid.

## Explanation

### 354.6 Subdivision plats

1. Whenever a parcel of land is divided into three or more lots at one time or by repeated division and there is not a plat of survey for every parcel, a subdivision plat must be made and approved. This does not apply to parcels transferred to governments for public improvements.

2. A Subdivision Plat must have a name that is unique for the county. It must be surveyed in accordance with 114A. Each lot must be assigned a progressive number. Public use areas, such as streets or parks, and areas held for future development must be assigned a progressive letter. A parcel of land may not be reserved by the subdivider unless it is large enough to serve a practical purpose.

3. Separate blocks may be assigned either numbers or letters. The auditor may assign a permanent real estate index number for each lot. Any easements and their purpose must be clearly stated.

### 354.7 Conveyances by Reference to Official Plat

Conveyance of any parcel should use the description from the approved subdivision plat.



## Explanation

### 354.8 Review and Approval by Governing Bodies

A proposed subdivision plat must be approved by all governing bodies having review jurisdiction before it can be recorded. A county has jurisdiction if it has adopted a subdivision ordinance. Similarly a city has review jurisdiction if it has a subdivision ordinance and it may have review power up to two miles outside its limits as explained in 354.9. A government must apply reasonable review standards and conditions as provided in their subdivision ordinance. Within 60 days of application for final approval the government must decide if the proposed subdivision complies with the comprehensive plan. The government shall consider and balance the interests of the owners, future owners, and the public interest when requiring the installation of public improvements as a condition for approval.

If a subdivision plat meets the requirements of this chapter and 114A and the conditions of the governing body, it shall be approved by resolution. All governments having jurisdiction must approve or waive the right to review before the recorder can accept and certify it.

### 354.9 Review of Subdivision Plats Within Two Miles of a City

1. If a city has subdivision regulations, it may extend its subdivision review jurisdiction up to two miles beyond its limits by an ordinance to that effect. The additional area must be clearly defined in this ordinance. This ordinance must be filed with both the auditor and the recorder.

2. If a county has subdivision regulations, any subdivision plat in an area of overlapping jurisdiction must be approved by both the city and county. A city must use the same standards and conditions for review as it uses within its own limits. A city and county may enter into a 28E intergovernmental agreement

## Legislation

### 354.8 REVIEW AND APPROVAL BY GOVERNING BODIES.

A proposed subdivision plat lying within the jurisdiction of a governing body shall be submitted to that governing body for review and approval prior to recording. A city may establish jurisdiction to review subdivisions outside its boundaries pursuant to the provisions of section 354.9. Governing bodies shall apply reasonable standards and conditions in accordance with applicable statutes and ordinances for the review and approval of subdivisions. The governing body, within sixty days of application for final approval of the subdivision plat, shall determine whether the subdivision conforms to its comprehensive plan and shall give consideration to the possible burden on public improvements and to a balance of interests between the proprietor, future purchasers, and the public interest in the subdivision when reviewing the proposed subdivision and when requiring the installation of public improvements in conjunction with approval of a subdivision. The governing body shall not issue final approval of a subdivision plat unless the subdivision plat conforms to sections 114A.9, 354.6, and 354.11.

If the subdivision plat and all matters related to final approval of the subdivision plat conform to the standards and conditions established by the governing body, and conforms to this chapter and chapter 114A, the governing body, by resolution, shall approve the plat and certify the resolution which shall be recorded with the plat. The recorder shall refuse to accept a subdivision plat presented for recording without a resolution from each applicable governing body approving the subdivision plat or waiving the right to review.

### 354.9 REVIEW OF SUBDIVISION PLATS WITHIN TWO MILES OF A CITY.

1. If a city, which has adopted ordinances regulating the division of land, desires to review subdivisions outside the city's boundaries, then the city shall establish by ordinance specifically referring to the authority of this section, the area subject to the city's review and approval. The area of review may be identified by individual tracts, by describing the boundaries of the area, or by including all land within a certain distance of the city's boundaries, which shall not extend more than two miles distance from the city's boundaries. The ordinance establishing the area of review or modifying the area of review by a city, shall be recorded in the office of the recorder and filed with the county auditor.

2. If a subdivision lies in a county which has adopted ordinances regulating the division of land, and also lies within the area of review established by a city pursuant to this section, then the subdivision shall be submitted to both the city and county for approval. The standards and conditions applied by a city for review and approval of the subdivision shall be the same standards and conditions used for review and approval of subdivisions within the city limits or shall be the standards and



## Legislation

conditions for review and approval established by agreement of the city and county pursuant to chapter 28E. Either the city or county may, by resolution, waive its right to review the subdivision or waive the requirements of any of its standards or conditions for approval of subdivisions, and certify the resolution which shall be recorded with the plat.

3. If cities establish overlapping areas of review outside their boundaries, then the cities shall establish by agreement pursuant to chapter 28E reasonable standards and conditions for review of subdivisions within the overlapping area. If no agreement is recorded pursuant to chapter 28E, then the city which is closest to the boundary of the subdivision shall have authority to review of the subdivision.

### 354.10 APPEAL OF REVIEW OR DISAPPROVAL.

When application is made to a governing body for approval of a subdivision plat, the applicant or a second governing body which also has jurisdiction for review may be aggrieved by any of the following:

1. The requirements imposed by a governing body as a condition of approval.
2. The governing body exceeding the time for review established by ordinance.
3. The denial of the application.
4. Failure of the governing body to approve or reject a subdivision plat within sixty days from the date of application for final approval.

If the plat is disapproved by the governing body, such disapproval shall state how the proposed plat is objectionable. The applicant has the right to appeal, within twenty days, the failure of the governing body to issue final approval of the plat as provided in this section.

The applicant or the aggrieved governing body has the right to appeal to the district court within twenty days after the receipt by the applicant of the requirements for approval of the subdivision. Notice of appeal shall be served on the governing body in the manner provided for the service of original notice pursuant to the rules of civil procedure. The appeal shall be tried de novo as an equitable proceeding and accorded a preference in assignment so as to assure its prompt disposition.

### 354.11 ATTACHMENTS TO SUBDIVISION PLATS.

A subdivision plat, other than an auditor's plat, that is presented to the recorder for recording shall conform to section 354.6 and shall not be accepted for recording unless accompanied by the following documents:

1. A statement by the proprietors and their spouses, if any, that the plat is prepared with their free consent and in accordance with their desire, signed and acknowledged before an officer authorized to take the acknowledgment of deeds. The statement by the proprietors may also include a dedication to the public of all lands within the plat that are designated for streets, alleys, parks, open areas, school property, or other public use, if the dedication is approved by the governing body.

## Explanation

on standards and conditions for review. Either party may waive its right to review or any of its standards and conditions for review concerning an overlapping area.

3. If cities have overlapping jurisdiction, they also may enter into a 28E agreement. If not, the city closest to the subdivision has the authority of review.

### 354.10 Appeal of Review or Disapproval

An applicant or second government with jurisdiction may be aggrieved by: 1. the conditions required for approval, 2. the review body exceeding the time limitations of its own ordinance, 3. a denial, or, 4. a failure to take action within the 60 days.

If a plat for subdivision is denied, the reasons must be stated. The applicant can appeal, within 20 days, the failure to grant final approval.

The applicant or other involved government may appeal, within 20 days, a denial or conditions for approval. This shall be done in district court and the reviewing government involved shall be notified according to civil procedure. Appeals shall be tried anew and receive preference for a prompt disposition.

### 354.11 Attachments to Subdivision Plats

A subdivision plat sent for recording must be accompanied by the following documents:

1. A notarized statement by the owners that the plat has been drawn with their consent and desire. This statement also may contain any dedication of land to the public.



## Explanation

2. A notarized statement from any mortgage or lien holders that said plat has been drawn with their consent and desire. A bond may be substituted as provided in 354.12. Any land conveyed to a government or dedicated to the public must be released by the mortgage and/or lien holders.

3. An attorney's title opinion listing owners, holders of mortgages and liens, and any encumbrances on the land. A utility easement is not considered an encumbrance for these purposes.

4. A certified resolution from all governments with review jurisdiction stating approval or waiving the right to review.

5. A certificate from the treasurer that all taxes are current and any special assessments are secured by bonds.

### 354.12 Bonds to Secure Liens

A bond of double the amount of the lien must be obtained and recorded if a lien holder's consent statement is not attached as required in 354.11 for one of the following reasons:

1. If the lien holder can't be found, it must include an affidavit saying so with the bond.
2. If the lien holder can't or won't accept payment in full, an affidavit saying so must be attached to the bond.

The bond shall be to the county and is to protect future buyers from the lien.

## Legislation

2. A statement from the mortgage holders or lien holders, if any, that the plat is prepared with their free consent and in accordance with their desire, signed and acknowledged before an officer authorized to take the acknowledgment of deeds. An affidavit and bond as provided for in section 354.12 may be recorded in lieu of the consent of the mortgage or lien holder. When a mortgage or lien holder consents to the subdivision, a release of mortgage or lien shall be recorded for any areas conveyed to the governing body or dedicated to the public.

3. An opinion by an attorney-at-law who has examined the abstract of title of the land being platted. The opinion shall state the names of the proprietors and holders of mortgages, liens, or other encumbrances on the land being platted and shall note the encumbrances, along with any bonds securing the encumbrances. Utility easements shall not be construed to be encumbrances for the purpose of this section.

4. A certified resolution by each governing body as required by section 354.8 either approving the subdivision or waiving the right to review.

5. A certificate of the treasurer that the land is free from certified taxes and certified special assessments or that the land is free from certified taxes and that the certified special assessments are secured by bond in compliance with section 354.12.

A subdivision plat which includes no land set apart for streets, alleys, parks, open areas, school property, or public use other than utility easements, shall be accompanied by the documents listed in subsections 1, 2, 3, and 4, and a certificate of the treasurer that the land is free from certified taxes other than certified special assessments.

### 354.12 BONDS TO SECURE LIENS.

A bond in double the amount of the lien shall be secured and recorded if a lien exists on the land included in a subdivision plat and the required consent of the lien holder is not attached for one of the following reasons:

1. The lien holder cannot be found, in which case an affidavit by the proprietor stating that the lien holder could not be found shall be recorded with the bond.
2. The lien holder will not accept payment or cannot, because of the nature of the lien, accept payment in full of the lien, in which case an affidavit by the lien holder stating that payment of the lien was offered but refused shall be recorded with the bond.

The bond shall run to the county and be for the benefit of purchasers of lots within the plat and shall be conditioned for the payment and cancellation of the debt as soon as practicable and to hold harmless purchasers or their assigns and the governing body from the lien.



## Legislation

### 354.13 AUDITOR'S PLATS AND PLATS OF SURVEY.

If a tract is divided or subdivided in violation of section 354.4 or 354.6, or the descriptions of one or more parcels within a tract are not sufficiently certain and accurate for the purpose of assessment and taxation under the guidelines of section 354.3, the auditor shall notify the proprietors of the parcels within the tract for which no plat has been recorded as required by this chapter, and demand that a plat of survey or a subdivision plat be recorded as required by this chapter. Notice shall be served by mail and a certified copy of the notice shall be recorded. The auditor shall mail a copy of the notice to the applicable governing bodies. If the proprietors fail, within thirty days of the notice, to comply with the notice or file with the auditor a statement of intent to comply, the auditor shall contract with a surveyor to have a survey made of the property and have a plat of survey or an auditor's plat recorded as necessary to comply with this chapter. Upon receipt of a statement of intent to comply; the auditor ay extend the time period for compliance.

### 354.14 APPEAL OF NOTICE.

A proprietor aggrieved by a notice to plat by the auditor may appeal to the district court within twenty days after service of notice. Upon appeal, the auditor shall take no further action pending a decision of the district court. The appeal shall be tried de novo as an equitable proceeding.

### 354.15 REVIEW OF AUDITOR'S PLATS.

A proposed auditor's plat shall be filed with the applicable governing body which shall review the plat within the time specified by ordinance, and if it conforms to chapter 114A, the governing body shall by resolution approve the plat and certify the resolution to be recorded with the plat. The governing body may state in the resolution whether the lots within the auditor's plat meet the standards and conditions established by ordinance for subdivision lots. The lots within a recorded auditor's plat and parcels within a recorded play of survey prepared under section 354.13 are individually subject to local regulations and ordinances. Approval of an auditor's plat shall not impose any liability on a governing body to install or maintain public improvements or utilities within the plat. Approval of an auditor's plat by a governing body shall not constitute a waiver of ordinances requiring a subdivision plat.

### 354.16 ATTACHMENTS TO AUDITOR'S PLATS AND PLATS OF SURVEY.

1. A plat of survey prepared pursuant to section 354.13 shall be accompanied by a certificate of the auditor that the plat of survey was prepared at the direction of the auditor because the proprietors failed to file a plat.

2. An auditor's plat shall conform to section 354.6, but is exempt from section 354.11. An auditor's plat presented to the recorder for recording shall be accompanied by the following documents:

## Explanation

### 354.13 Auditor's Plats and Plats of Survey

If a tract of land is divided without filing the appropriate plat of survey, acquisition, or subdivision; or if a plat is not up to the required standards; the auditor shall notify the owners and demand the situation be remedied. If they have not agreed to comply within 30 days of notice, the auditor shall contract with a surveyor to have it done.

### 354.14 Appeal of Notice

The owner may appeal within 20 days after receiving notice to district court and the auditor shall take no further action until the matter is settled.

### 354.15 Review of Auditor's Plats

A proposed auditor's plat, if it meets the surveying standards set out in 114A, shall be approved by resolution of the reviewing local government and a copy of it recorded with the plat. The government may state in the resolution whether the lots meet its subdivision standards and conditions. These lots are individually subject to the local rules. Approval does not require any public improvements and is not a waiver of the subdivision ordinance.

### 354.16 Attachments to Auditor's Plats and Plats of Survey

1. An auditor's plat shall be accompanied by a certificate that it is such, and was prepared because the owners failed to do so.

2. An auditor's plat must meet the standards of 354.6, but shall come with the following documents instead of those called for in 354.11:



## Explanation

- a. a certificate from the auditor that it was ordered done by him or her because the owners failed to do so; that it is for tax purposes and that it is not a dedication of property nor does it incur any liability for any government.
- b. a resolution from the governing body approving the plat or waiving the right to review.
- c. a list of all lots with the owners' names, their size, and the location of the records of transfer.
- d. a certificate from the auditor that no title search has been conducted to determine any claims against any lots and that the lots are subject to the rules and ordinances of the local governing body.

### 354.17 Costs and Collection of Costs

The surveyor will present a detailed bill for the plat, broken down into the cost for each lot. The auditor shall file an assessment with the treasurer against each lot to be collected at the discretion of the supervisors in no more than 10 equal annual payments with interest accruing on the unpaid balance.

### 354.18 Recording of Plats

Plats earlier described shall be filed, along with the appropriate attachments, with the recorder. Exact copies also shall go to the auditor and assessor. Any replat as provided for in 354.25 or new subdivision plat shall replace the original.

The recorder shall examine each plat to see that it meets the conditions of this chapter. He or she shall keep on hand one copy from which legible copies can be made. The recorder can specify the type of paper and size of the plat, which cannot be smaller than 8.5 by 11 inches.

## Legislation

- a. A certificate of the auditor that the auditor's plat was prepared at the direction of the auditor because the proprietors failed to file a plat, that the plat was prepared for assessment and taxation purposes, and that the recording of the plat does not constitute a dedication or impose any liability upon the state or governmental agency.
- b. A certified resolution by the governing body approving the plat or waiving the right to review.
- c. A list for each lot within the plat of the proprietor's names, the area, expressed in acreage or square feet, the book and page number of the recorded conveyance to the proprietors, and the permanent real estate index number, where established.
- d. A certificate of the auditor that no search was made at the time of the recording of the plat to determine the existence of any liens, mortgages, delinquent taxes, or special assessments, that no search was made, other than the records of the auditor's office, to establish title to the property within the plat, and that the lots within the plat are subject individually to the regulations and ordinances of the applicable governing body.

### 354.17 COSTS AND COLLECTION OF COSTS.

The surveyor shall present to the auditor a statement of the total cost of the surveying, platting, and recording of a plat prepared pursuant to section 354.13. The surveyor shall also present a statement of the part of the total cost to be assessed to each parcel included in the plat based on the time involved in establishing the boundaries of each parcel. The auditor shall certify to the treasurer an assessment for the platting costs against the lots within the plat which shall be collected in the same manner as general taxes, except that the board of supervisors, by resolution, may establish not more than ten equal annual installments and provide for interest on unpaid installments at a rate not to exceed that permitted by chapter 74A.

### 354.18 RECORDING OF PLATS.

A plat of survey prepared pursuant to this chapter and a subdivision plat, with attachments, shall be recorded in the office of the county recorder, and an exact copy of the plat shall be filed in the offices of the county auditor and assessor. A replat of any part of an official plat pursuant to section 354.25, or a recorded subdivision plat of any part of an existing official plat, shall supersede that part of the original official plat, including unused public utility easements.

The recorder shall examine each plat of survey and subdivision plat to determine whether the plat is clearly legible and whether the approval by the applicable governing body and the other attachments required by this chapter are presented with the plat. The recorder shall also keep a reproducible copy of the plat from which legible copies can be made. The recorder may specify the material and the size of the plat, not less than eight and one-half inches by eleven inches, that will be accepted for recording in order to comply with this section. The recorder shall not record a subdivision plat that violates this chapter.



## Legislation

### 354.19 DEDICATION OF LAND.

An official plat which conforms to this chapter and has attached to the plat a dedication by the proprietors to the public and approval of the dedication by the governing body is equivalent to a deed in fee simple from the proprietors to the public of any land within the plat that is dedicated for street, alley, walkway, park, open area, school property, or other public use. An approved dedication of land for street purposes by the proprietors establishes an easement for public access, whether or not a deed has been recorded or the improvement of the street is complete, except when the resolution approving the plat specifically sets aside portions of the dedicated land as not being open for public access at the time of recording for public safety reasons. The recording of a subdivision plat shall dedicate to the public any utility, sewer, drainage, access, walkway, or other public easement shown on the plat.

The recording of an auditor's plat shall not serve to dedicate streets, alleys, parks, open areas, school property, public improvements, or utilities. The failure to show the existence of an easement or any public interest on the auditor's plat shall not remove or otherwise affect the interest.

### 354.20 ACTION TO ANNUL PLATS.

If a plat is filed and recorded in violation of this chapter, a governing body or a proprietor aggrieved by the violation, after filing written notice with the proprietors who joined in the acknowledgment of the plat or their successors in interest, may institute a suit in equity in the district court. The court may order the plat annulled except as provided in section 354.21.

### 354.21 LIMITATION OF ACTIONS ON OFFICIAL PLATS.

An action shall not be maintained, at law or in equity, in any court, against a proprietor, based upon an omission of data shown on an official plat or upon an omission, error, or inconsistency in any of the documents required by this chapter unless the action is commenced within ten years after the date of recording of the official plat. Limitation of actions based on claims other than those provided for in this section shall be consistent with chapter 614.

### 354.22 VACATION OF OFFICIAL PLATS.

The proprietors of lots within an official plat who wish to vacate any portion of the official plat shall file a petition for vacation with the governing body which would have jurisdiction to approve the plat at the time the petition is filed. After the petition has been filed, the governing body shall fix the time and place for public hearing on the petition. Written notice of the proposed vacation shall be served in the manner of original notices as provided in Iowa rules of civil procedure and be served upon proprietors and mortgagees within the official plat that are within three hundred feet of the area to be vacated. If a portion of the official plat adjoins a river or state-owned lake, the Iowa

## Explanation

### 354.19 Dedication of Land

An official plat that meets all the provisions of this chapter, and has attached to it a dedication by the owners with the approval of the governing body, shall be equal to a fee simple deed for any land listed on the plat as dedicated for a public purpose. This immediately establishes a public easement for all property listed for or dedicated to a public purpose on a plat, unless the approval document sets aside a portion not open to the public for safety reasons.

The recording of an auditor's plat does not dedicate any property to the public and the lack of showing any easement or other public interest does nothing to remove or damage the public's claim to it.

### 354.20 Action to Annul Plats

If a plat is recorded in violation of this chapter, the governing body or affected owner may, after notifying all concerned parties, file an action in district court to have the plat annulled except for the limits in the following section.

### 354.21 Limitation of Actions on Official Plats

There shall be a time limit of 10 years from the time of the recording for filing any action against an owner because of any omission on the plat or omission, error, or inconsistency in any of the required documents.

### 354.22 Vacation of Official Plats

If an owner of any lot should wish to vacate any part of an official plat he or she needs to file a petition to that effect with the local government having review power at that time. The government shall set a public hearing on the matter with notice of it being published twice listing its date, time, and location with 10 days between publications. Written notice shall be given in the usual legal manner to owners and mortgage



## Explanation

holders in the same plat with property interests within 300 feet of the lots involved. If the lots border a river or state lake, the DNR must be notified.

An official plat or part of one shall be vacated after all the following documents have been recorded:

1. A signed document from all the owners and mortgage holders in the area to be vacated declaring their intent and consent. It must include all the existing lot descriptions and the new descriptions for the land after the vacation.
2. An approving resolution from the governing body including the transfer of any area set aside or dedicated for public use.
3. A certificate from the auditor that the property can be accurately described for taxation without the old descriptions.

This section does not authorize the closing or obstruction of a public highway.

The vacation of part of a plat does not affect any recorded restrictive and protective covenants or building and use restrictions. They can only be changed by the signed consent of all the owners and mortgage holders within the whole official plat.

### **354.23 Vacation of Streets or Other Public Lands**

A city or county may vacate part of a plat that has been transferred to it or dedicated to the public if it is decided to be of no benefit.

This shall be by resolution and public meeting or by ordinance and must be recorded. The property may be transferred by deed or, if to the adjacent owners, by the vacation document. If to the adjoining owners the document must list them and individual description of each parcel being transferred. All this shall be filed with the recorder and auditor.

## Legislation

department of natural resources shall be served written notice of the proposed vacation. Notice of the proposed vacation shall be published twice, with fourteen days between publications, stating the date, time, and place of the hearing.

The official plat or portion of the official plat shall be vacated upon recording of all of the following documents:

1. An instrument signed, executed, and acknowledged by all the proprietors and mortgagees within the area of the official plat to be vacated, declaring the plat to be vacated. The instrument shall state the existing lot description for each proprietor along with an accurate description to be used to describe the land after the lots are vacated.
2. A resolution by the governing body approving the vacation and providing for the conveyance of those areas included in the vacation which were previously set aside or dedicated for public use.
3. A certificate of the auditor that the vacated part of the plat can be adequately described for assessment and taxation purposes without reference to the vacated lots.

No part of this section authorizes the closing or obstructing of public highways.

The vacation of a portion of an official plat shall not remove or otherwise affect a recorded restrictive covenant, protective covenant, building restriction, or use restriction. Recorded restrictions on the use of property within an official plat shall be modified or revoked by recording a consent to the modification or removal, signed and acknowledged by the proprietors and mortgagees within the official plat.

### **354.23 VACATION OF STREETS OR OTHER PUBLIC LANDS.**

A city or a county may vacate part of an official plat that has been conveyed to the city or county or dedicated to the public which is deemed by the governing body to be of no benefit to the public.

The city or county shall vacate by resolution following a public hearing or by ordinance and the vacating instrument shall be recorded. The city or county may convey the vacated property by deed or may convey the property to adjoining proprietors through the vacation instrument. If the vacating instrument is used to convey property, then the instrument shall include a list of adjoining proprietors to whom the vacated property is being conveyed along with the corresponding description of each parcel being conveyed. A recorded vacation instrument which conforms to this section is equivalent to a deed of conveyance, and the instrument shall be filed and indexed as a conveyance by the recorder and auditor.



## Legislation

A vacation instrument recorded pursuant to this section shall not operate to annul any part of an official plat except as provided for in section 354.22.

### 354.24 ERRORS ON RECORDED PLATS.

If an error or omission in the data shown on a recorded plat is detected by subsequent examinations or revealed by retracing the lines shown on the plat, the original surveyor or two surveyors confirming the error through independent surveys shall record an affidavit confirming that the error or omission was made. The affidavit shall describe the nature and extent of the error or omission and also describe the corrections or additions to be made to the plat and note the book and page number of the recorded plat. The recorder shall write across that part of the plat so corrected the word "corrected," and note the book and page number of the recorded affidavit. A copy of the recorded affidavit shall be filed with the auditor and assessor. The affidavit shall raise a presumption from the date of recording that the purported facts stated in the affidavit are true, and after the lapse of three years from the date of recording the presumption shall be conclusive.

### 354.25 SURVEY AND REPLAT OF OFFICIAL PLATS.

A survey of an official plat shall conform as nearly as possible to the original lot lines shown on the official plat. The surveyor may summon witnesses, administer oaths, and prepare affidavits and boundary line agreements as necessary in order to establish the location of property lines or lot lines. If a substantial error is discovered in an official plat or if it is found to be materially defective, a proprietor may petition the governing body which would have jurisdiction to approve the plat at the time the petition is filed for a replat of any part of the official plat. Notice of the proposed replat shall be served, in the manner of original notice as provided in Iowa rules of civil procedure, to the proprietors of record and holders of easements specifically recorded within the area to be replatted. The governing body has jurisdiction of the matter upon proof of publication of notice of the petition once each week for two weeks in a newspaper of general circulation within the area of the replat.

A replat of an official plat ordered by the governing body:

1. Shall be prepared by a surveyor pursuant to chapter 114A and recorded; and
2. Shall be exempt from the provisions of section 354.11; and
3. Shall have attached to the plat a statement by the surveyor that the replat is prepared at the direction of the governing body. The costs of the replat shall be presented to the auditor and assessed against the property included in the replat as provided for in section 354.17.

## Explanation

This shall not annul any part of the official plat except as noted in section 354.22.

### 354.24 Errors on Recorded Plats

If an error or omission on a recorded plat should be found, the original surveyor or two others having conducted independent surveys, shall file a affidavit stating so. It shall describe the type and extent of the error and the changes to be made to the plat. The recorder shall mark on the adjusted part of the plat "corrected" and cross reference the location of the affidavit. A copy of the affidavit shall go to the auditor and assessor. The correction will be assumed to be true and become permanent after three years.

### 354.25 Survey and Replat of Official Plats

Later surveys done in an area with a official plat should conform to the original lot lines as well as they can. If a substantial error is found in an official plat, a property owner may petition the governing body with review power for the replat of any part. Notice shall be given in the usual way to all the affected owners and lien holders in that area. Notice also must be published once a week for two weeks in a local newspaper.

A replat of an official plat shall:

1. be prepared by surveyor in accordance with 114A and be recorded.
2. be exempt of all the attachments listed in 354.11.
3. have a statement attached by the surveyor that it was ordered by the governing body. The costs of the replat shall be sent to the auditor and assessed as listed in 354.17.





## Explanation

### 354.26 Corrections or Changes to Plats

A vacation, correction, or replat must go to the recorder with copies to the auditor and assessor. The recorder shall so note in the margin of the official plat or do so with an attachment. The auditor will make the appropriate changes on his copies. If a governing body makes an address or street name change, it must list all official plats affected and send a copy of the change to the recorder, auditor, and assessor.

### 354.27 Noting the Permanent Real Estate Index Number

If a county has a permanent real estate index number system, the auditor may use those numbers on property transfers.

## Legislation

### 354.26 CORRECTIONS OR CHANGES TO PLATS.

A vacation, correction, or replatting as provided for in this chapter, shall be recorded and an exact copy shall be filed with the auditor and assessor. If a governing body changes the addresses or street names shown on an official plat, notice of the change shall note the name or other designation of each official plat affected and shall be filed with the recorder, auditor, and assessor. The recorder shall note the vacation, correction, or replatting on the margin of the official plat or upon an attachment to the official plat for that purpose. The auditor shall make the proper changes on the plats required to be kept by the auditor.

### 354.27 NOTING THE PERMANENT REAL ESTATE INDEX NUMBER.

When a permanent real estate index number system has been established by a county pursuant to section 441.29, the auditor may note the permanent real estate index number on every conveyance.

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