

Opinion No. 61

**Abstract of Title, Filed with Plat—
Title Insurance Policy.**

Held: An Abstract of title must be prepared and filed with the plat, such abstract of title to be prepared and certified to, by an abstractor who has been duly qualified to engage in the business of compiling abstracts of title to real estate in the state of Montana, and that a title insurance policy may not be used or filed in lieu thereof.

Aug. 26, 1947

Mr. Melvin N. Hoiness
County Attorney
Yellowstone County
Billings, Montana

Dear Mr. Hoiness:

You have submitted for my opinion the question:

"May a title insurance policy be filed with the county clerk and recorder in lieu of an abstract of title as required by Section 4986, Revised Codes of Montana, 1935, as amended by Chapter 20, Laws of 1943?"

The amendment of Section 4986 by Chapter 20, Laws of 1943, did not change in any particular the pertinent part of said Section applicable to your inquiry.

The said pertinent part of Section 4986 is as follows:

"The owner of the land so surveyed and platted **must** have prepared and file with said plat an abstract of title of the land; such abstract of title must be prepared and certified to by an abstractor who has been duly qualified to engage in the business of compiling abstracts of title to real estate in the state of Montana; such abstract of title **must** be submitted to the county attorney of the county where said platted land is outside of any city or town. . . ." (Emphasis supplied).

The above quoted part of Section 4986 has been the law, unchanged

since 1917. It is mandatory in its terms.

The language of the above quoted part of Section 4986 is plain, simple, direct and unambiguous, and as our Supreme Court has held:

“Whenever language of a statute is plain, simple, direct and unambiguous, it does not require construction—it construes itself.”

State ex rel Dufresne v. Leslie,
100 Mont. 449; 50 Pac. (2d) 959;
100 A.L.R. 1329.

Our Supreme Court has stated the same reason somewhat differently as follows:

“If the language of a statute is plain and free from ambiguity and expresses a single definite and sensible meaning, such meaning is conclusively presumed to be the one intended by the legislature.”

Smith v. Iron Mountain Tunnel
Co., 49 Mont. 13; 125 Pac. 649;
Ann. Cas. 1914 B, 551.

The statute requires an abstract of title to be prepared and certified to by an abstractor who has been duly qualified in the compiling of abstracts in the state of Montana. Such an abstractor must be certified by the board under Chapter 319 of Vol. 2, Political Code of 1935.

The rule of “expressio unius est exclusio alterius” would apply here.

The legislature could have provided, if it so desired, under this statute, some other method of assuring title, but since the legislature made it mandatory that a certified abstract must be filed, we must take the law as the legislature has given it to us.

It is therefore, my opinion that, an abstract of title must be prepared and filed with the plat, such abstract of title to be prepared and certified to, by an abstractor who has been duly qualified to engage in the business of compiling abstracts of title to real estate in the state of Montana, and that a title insurance policy may not be used or filed in lieu thereof.

Sincerely yours,
R. V. BOTTOMLY,
Attorney General