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LAND CLASSIFICATION — Subdivision, deeds, time of recording, effective date of; SUBDIVISION — Deeds, time, of recording, effective date of; COUNTY CLERK AND RECORDER — Duties, deeds, time of recording; REAL PROPERTY — Subdivision, deeds, time of recording, effective date of. Sections 11-3861, 11-3862, and 43-507, R.C.M. 1947.

HELD: Sections 11-3849 through 11-3876, R.C.M. 1947, do not govern recording of deeds prepared and executed under contracts for deed prior to July 1, 1973, but not presented for recording until after June 30, 1973.

December 31, 1973

Mr. Thomas A. Olson
Gallatin County Attorney
P.O. Box 967
Bozeman, Montana 59715

Dear Mr. Olson:

Your request of my opinion may best be stated as follows:

Do the provisions of the Montana Subdivision and Platting Act of 1973 govern the filing and recording of deeds which were prepared and executed under contracts for deed prior to July 1, 1973, but not actually presented to the county clerk and recorder for recording until after June 30, 1973?

The Montana Subdivision and Platting Act (hereinafter called the "Act"), codified in sections 11-3849 through 11-3876, Revised Codes of Montana, 1947, prescribed no date upon which the Act would become effective. Section 43-507, R.C.M. 1947, provides:

Every statute, unless a different time is prescribed therein, takes effect on the first day of July of the year of its passage and approval.

Therefore, since no effective date was prescribed in the Act, it became effective on July 1, 1973.

My research reveals no provisions in the Act which make it applicable to deeds which were prepared and executed under contracts for deed prior to July 1, 1973, even though such deeds were not presented to the clerk and recorder for recording until after June 30, 1973.

Several sections explicitly state that the Act's provisions apply to divisions of real property after June 30, 1973. Section 11-3861 (12), provides in pertinent part:

> "Subdivision" means the division of land, or land so divided, into two (2) or more parcels, whether contiguous or not, any of which is ten (10) acres or less ... for the purpose of sale, rent, lease, or other conveyance from a tract of land held in single or undivided ownership on **July 1, 1973,** ... (Emphasis supplied)

and section 11-3862 states in pertinent part:

> (1) Except as provided herein, all division of real property made **after June 30, 1973,** into lots, tracts, or parcels any of which is ten (10) acres or less in size ... must be surveyed ... and a certificate of survey thereof must be completed. ...
>
> (2) Every subdivision of land after **June 30, 1973,** shall be surveyed and platted in conformance with this Act ... (Emphasis supplied)

It must be presumed that a contract for deed prepared and executed prior to July 1, 1973, would contain, among other things, a dated and executed deed to be delivered to the buyer for his recording of that deed upon his final compliance with the terms of the contract. In the factual context of your question the constructive division of real estate had occurred prior to July 1, 1973, at the time of the contract for deed was made and executed, even though title to the land would not vest in the buyer until the terms of the contract were finally completed and the deed delivered to the buyer for his recording of said deed. The fact that the deed was not recorded prior to July 1, 1973, would appear to have no bearing upon whether or not the Act should apply to such a situation. The fact that the contract and deed were prepared, dated and executed prior to July 1, 1973, indicates that the **division** of land occurred prior to the effective date of the Act, and sections 11-3861 (12) and 11-3862, supra, clearly dictate that the Act not apply to such divisions.

THEREFORE, IT IS MY OPINION:

> The Montana Subdivision and Platting Act does not govern the recording of deeds prepared and executed under contracts for deed prior to July 1, 1973, but not presented for recording until after June 30, 1973.

Very truly yours,

ROBERT L. WOODAHL
Attorney General