

VOLUME NO. 37

OPINION NO. 88

SUBDIVISION AND PLATTING ACT - Transfers of land which do not involve "divisions of land" or "subdivisions," as defined by the Montana Subdivision and Platting Act, do not require a certificate of survey or a plat before being recorded by the clerk and recorder; PUBLIC OFFICERS - Transfers of land which do not involve "divisions of land" or "subdivisions," as defined by the Montana Subdivision and Platting Act, do not require a certificate of survey or a plat before being recorded by the clerk and recorder; REVISED CODES OF MONTANA, 1947, - Sections 11-3859, et seq, 16-2902.

HELD: The transfers of land referred to in your factual situation are not "divisions of land" or "subdivisions" as defined in the Montana Subdivision and Platting Act, and need not meet the requirements of section 11-3862(3), R.C.M. 1947, before being recorded by the clerk and recorder, pursuant to section 16-2902, R.C.M. 1947.

10 November 1977

William A. Douglas, Esq.
Lincoln County Attorney
Lincoln County Courthouse
Libby, Montana 59923

Dear Mr. Douglas:

You have requested my opinion as to the applicability of the Montana Subdivision and Platting Act, sections 11-3859, et seq, R.C.M. 1947, to the following factual situation:

Certain deeds filed prior to July 1, 1973, the effective date of the Subdivision and Platting Act, now contain vague legal descriptions. The owners of record under these deeds are now selling their parcels of land as described in these

deeds and are demanding that the clerk and recorder file the deeds without a certificate of survey or subdivision plat.

Your specific question is whether the clerk and recorder must file these deeds when executed subsequent to July 1, 1973 without an accompanying certificate of survey or subdivision plat. The clerk and recorder has a statutory duty to record all deeds, regardless of the legal description, upon payment of the proper fees. Section 16-2902, R.C.M. 1947. Therefore, the clerk and recorder must perform this duty unless a statutory exception exists. The controlling statute in your situation is section 11-3862(3), R.C.M. 1947, which states:

(3) The county clerk and recorder of any county shall not record any instrument which purports to transfer title to or possession of a parcel or tract of land which is required to be surveyed by this act unless the required certificate of survey or subdivision plat has been filed with the clerk and recorder and the instrument of transfer describes the parcel or tract by reference to the filed certificate or plat. (Emphasis added.)

Therefore, this section of the law does not apply to any and all transfers of land subsequent to July 1, 1973, but only to those transfers of land which are required to be surveyed by the Subdivision and Platting Act. A reading of the Subdivision and Platting Act discloses that surveys are only required for "divisions of land" and "subdivisions." Section 11-3862(1) and (2), R.C.M. 1947. A "division of land" is defined in section 11-3861(2.1), R.C.M. 1947, as follows:

"Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring, or contracting to transfer, title to or possession of a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this act. Provided that where required by this act the land upon which an improvement is situated has been subdivided in compliance with this act, the sale, rent, lease or other conveyance of one or more parts of a building, structure, or other improvement situated on one or more parcels of land is not a division of land and is not subject to the terms of this act.

A "subdivision" is defined in section 11-3861(1.2), R.C.M. 1947, as follows:

"Subdivision" means a division of land, or land so divided, which creates one or more parcels, containing less than twenty (20) acres, exclusive of public roadways, in order that the title to or possession of the parcels may be sold, rented, leased, or otherwise conveyed, and shall include any resubdivision; and shall further include any condominium or area, regardless of its size, which provides or will provide multiple space for recreational camping vehicles, or mobile homes. A subdivision shall comprise only those parcels less than twenty (20) acres which have been segregated from the original tract, and the plat thereof shall show all such parcels whether contiguous or not. Provided, however, condominiums constructed on land divided in compliance with this chapter are exempt from the provisions of this chapter.

It is apparent that the transfers of land to which you have referred are neither "divisions of land" nor "subdivisions" as defined by the Subdivision and Platting Act. Therefore, section 11-3862(3), R.C.M. 1947, does not apply and the clerk and recorder cannot require a certificate of survey or a plat before recording the deeds described in your factual situation, and must adhere to section 16-2902, R.C.M. 1947.

Further support for this conclusion is found in the legislative history of the Subdivision and Platting Act. Section 11-614, R.C.M. 1947, which was repealed by the Subdivision and Platting Act, had previously required a survey when transferring an irregularly shaped tract of land. However, the requirement was not carried over into the Subdivision and Platting Act when enacted in 1973. Furthermore, an amendment to the Subdivision and Platting Act, which would have required a survey of irregularly shaped tracts of land, was offered and rejected by the 1974 Legislature.

THEREFORE, IT IS MY OPINION:

The transfers of land referred to in your factual situation are not "divisions of land" or "subdivisions" as defined in the Montana Subdivision and Platting Act, and need not meet the requirements of section 11-3862(3), R.C.M. 1947, before being recorded by the clerk and recorder, pursuant to section 16-2902, R.C.M. 1947.

Very truly yours,

MIKE GREELY
Attorney General