

VOLUME NO. 38

OPINION NO. 48

LICENSES, PROFESSIONAL AND OCCUPATIONAL - Effect of "sun-setting" of Board of Abstracters on requirement that certificate be prepared by licensed title abstracter;

SUBDIVISION AND PLATTING ACT - Approval of final plat, requirement that certificate of title be submitted with final plat;

MONTANA CODE ANNOTATED - Sections 2-8-103(1)(a), 2-8-112, 2-8-122, 33-1-212, 76-3-612.

- HELD: 1. The "sunsetting" of the board of abstracters does not relieve the subdivider of his duty under section 76-3-612, MCA, to provide a certificate of title with his final plat.
2. The "sunsetting" of the board of abstracters repeals by implication the requirement that the certificate of title under section 76-3-612, MCA, be prepared by a licensed title abstracter.
3. A policy of title insurance does not satisfy the certificate of title requirement under section 76-3-612, MCA.

31 October 1979

Charles Graveley, Esq.
Lewis and Clark County Attorney
Lewis and Clark County Courthouse
Helena, Montana 59601

Dear Mr. Graveley:

You have requested my opinion on the following question:

What effect does the "sunset" termination of the board of abstracters under section 2-8-103(1)(a), MCA, have on local subdivision review under section 76-3-612, MCA?

Your question arises from the following facts. The 1977 Legislature enacted Title 2, chapter 8, MCA, the Montana Sunset Law, which provides for periodic legislative review of state agencies and boards and for the phasing out of those agencies and boards which do not meet certain performance criteria. Section 2-8-103(1)(a), MCA, specifically terminates the board of abstracters as of July 1, 1979. Hearings were held during the 1979 legislative session and no reestablishment legislation was enacted under section 2-8-122, MCA. The board of abstracters ceased to exist on July 1, 1979. Section 76-3-612, MCA, provides:

Abstract of title required for review process.
(1) The subdivider shall submit with the final plat a certificate of a licensed title abstracter showing the names of the owners of record of the land to be subdivided and the names of lien

holders or claimants of record against the land and the written consent to the subdivision by the owners of the land, if other than the subdivider, and any lien holders or claimants of record against the land.

(2) The governing body may provide for the review of the abstract or certificate of title of the land in question by the county attorney where the land lies in an unincorporated area or by the city or town attorney when the land lies within the limits of a city or town.

Your question arises from the fact that since the "sunsetting" of the board of abstracters, there no longer exists a procedure by which a person may become a "licensed title abstracter" eligible to perform the services required by subsection (1) of the above section.

It is clear that these legislative actions present a case of amendment or repeal by implication. See 1A Sutherland, Statutory Construction §§ 22.13, 22.22, 23.02 (1972). The requirement in section 76-3-612, MCA, simply cannot be met by a subdivider, since no state agency exists to perform the function of licensing title abstracters. Although amendments or repeals by implication are not favored, see State Board of County Commissioners, 89 Mont. 37, 76, 296 P. 1 (1931), such an amendment or repeal is clearly present where two statutory enactments are as clearly repugnant as these. In re Naegele, 70 Mont. 129, 135, 224 P. 269 (1924). The question remains, however, what is the proper construction of section 76-3-612, MCA, as implicitly amended.

In answering this inquiry, the intent of the Legislature, as divined from the plain import of the statutory language, is controlling. The certificate of title requirement in section 76-3-612, MCA, was enacted to inform the local governing body of the existence of encumbrances on the title of land proposed to be subdivided. By "sunsetting" the board of abstracters, the Legislature was not expressing the opinion that this information was any less necessary in the process of determining whether a particular subdivision is in the public interest. Rather, the "sunset" of the board was a legislative determination in part that the board's licensing function did not meet the criteria set forth in section 2-8-112, MCA. It is therefore my opinion that the "sunsetting" of the board of abstracters did not obviate the

requirement in section 76-3-612, MCA, that a certificate of title be presented with the final plat. Rather, it merely removed the requirement that the certificate be prepared by a "licensed" title abstracter.

Your letter inquires whether a policy of title insurance will satisfy the requirements of section 76-3-612, MCA. In my opinion it will not. As noted above, the purpose of section 76-3-612, MCA, is to inform the governing body of the status of the title. Title insurance is wholly inadequate for this purpose, since such a policy does not purport to detail the status of title, but merely constitutes an agreement that the insurance carrier will defend title if defects should be alleged in the future. See § 33-1-212, MCA. A policy of title insurance does not satisfy the requirements of section 76-3-612, MCA.

THEREFORE, IT IS MY OPINION:

1. The "sunsetting" of the board of abstracters does not relieve the subdivider of his duty under section 76-3-612, MCA, to provide a certificate of title with his final plat.
2. The "sunsetting" of the board of abstracters repeals by implication the requirement that the certificate of title under section 76-3-612, MCA, be prepared by a licensed title abstracter.
3. A policy of title insurance does not satisfy the certificate of title requirement under section 76-3-612, MCA.

Very truly yours,

MIKE GREELY
Attorney General