

OPINIONS OF THE ATTORNEY GENERAL

VOLUME NO. 39

OPINION NO. 74

LAND DEVELOPMENT - Subdivision review exemption for conversions of existing buildings to condominiums;
SUBDIVISION AND PLATTING ACT - Subdivision review exemption for conversions of existing buildings to condominiums;
MONTANA CODE ANNOTATED - Sections 76-3-103(15), 76-3-201, 76-3-204, 76-3-207(1), 76-4-102(7);
OPINIONS OF THE ATTORNEY GENERAL - 37 Op. Att'y Gen. No. 41 (1977), 39 Op. Att'y Gen. No. 28 (1981).

HELD: Conversions of existing rental occupancy apartment houses or office buildings to individual condominium ownership are exempted from the requirements of the Montana Subdivision and Platting Act, Title 76, ch. 3, MCA, by section 76-3-204, MCA.

12 October 1982

Robert L. Deschamps, III, Esq.
Missoula County Attorney
Missoula County Courthouse
Missoula, Montana 59801

Dear Mr. Deschamps:

You have requested my opinion concerning the applicability of the requirements of the Montana Subdivision and Platting Act, Title 76, ch. 3, MCA, to

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existing structures, usually apartment or office buildings, that are sold individually as condominiums. In other words, does an owner's sale of an existing apartment house or office building, owned by one entity, to several individual owners, trigger the application of the Montana Subdivision and Platting Act? I have concluded that it does not.

Section 76-3-103(15), MCA, defines the term "subdivision" as follows:

"Subdivision" means a division of land or land so divided which creates one or more parcels containing less than 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.

This definition is very similar to the definition of subdivision contained in section 76-4-102(7), MCA, of the Sanitation in Subdivisions Act:

"Subdivision" means a division of land or land so divided which creates one or more parcels containing less than 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 includes any resubdivision and any condominium or area, regardless of size, which provides permanent multiple space for recreational camping vehicles or mobile homes.

Based on the reasoning contained in 39 Op. Att'y Gen. No. 28 (July 28, 1981), interpreting the nearly identical definition of "subdivision" found in the Sanitation in Subdivisions Act, I must first conclude that the provisions of the Montana Subdivision and Platting Act apply to all condominiums not expressly exempted by one of the provisions of Title 76, chapter 3, part 2. Your specific question then becomes whether the conversion of an apartment or office

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building to a condominium is a subdivision subject to the exemption stated in section 76-3-204, MCA. I conclude that it is.

I addressed the exemption contained in section 76-3-204, MCA, in 39 Op. Att'y Gen. No. 28 (July 28, 1931), in the context of responding to an argument proffered by those who argued that section 76-3-204, MCA, exempted all condominiums from review. However, the much narrower question of whether this section might apply to existing structures was not addressed or answered in that opinion.

Section 76-3-204, MCA, provides as follows:

Exemption for conveyances of one or more parts of a structure or improvement. 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, as that term is defined in this chapter, and is not subject to the requirements of this chapter.

The word "situated" indicates that the Legislature was referring to an existing building, built and utilized prior to the time the division occurs. This would be the situation where a developer converts an existing apartment or office building used for rental purposes to condominiums.

Because new condominium developments may physically affect the environment and increase demand upon public services, it is consistent with the Subdivision and Platting Act that condominium developments be reviewed and approved prior to construction. However, the same physical impacts do not flow from a change in the ownership of an existing building. Therefore the necessity for public review is not present with respect to the nondevelopmental aspects of the condominium form of property ownership. Moreover, from a practical standpoint, existing structures do not lend themselves to the kind of public interest review specified in the Subdivision and Platting Act. As noted in a relevant New Jersey case, "it is use rather than form of ownership that is the proper concern and focus of zoning and planning regulation." Maplewood Village Ten. Ass'n v. Maplewood Village, 116 N. J. Super. 372, 282 A.2d 428, 431 (1971).

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It should be noted, though, that while condominiums created by conversion from another form of ownership are exempted by section 76-3-204, MCA, they are still subject to the general prohibition in the Subdivision and Platting Act that the conversion not simply be the final step in a plan designed to purposely evade the application of the Act. See, e.g., §§ 76-3-201 and 76-3-207(1), MCA; 37 Op. Att'y Gen. No. 41 (1977). The pattern or manner of division, sale, and/or construction upon land may suggest that conversion was a tool for avoiding subdivision review. For example, construction of an apartment building closely followed by conversion to condominiums may suggest that the Act and the public interest it seeks to protect may have been circumvented.

THEREFORE, IT IS MY OPINION:

Conversions of existing rental occupancy apartment houses or office buildings to individual condominium ownership are exempted from the requirements of the Montana Subdivision and Platting Act, Title 76, ch. 3, MCA, by section 76-3-204, MCA.

Very truly yours,

MIKE GREELY
Attorney General