

1 *House* BILL NO. *713*  
 2 INTRODUCED BY *Ramirez* *Vata* *FAGG*  
 3 *Meloy*  
 4 A BILL FOR AN ACT ENTITLED: "THE MONTANA MARKETABLE TITLE  
 5 ACT OF 1977."

6  
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

8 Section 1. Short title. This act may be cited as "The  
9 Montana Marketable Title Act of 1977".

10 Section 2. Purpose. The purpose of this act is to  
11 simplify and facilitate transactions in land by providing  
12 that a person having the legal capacity to own land in this  
13 state who has a chain of record title to land which is  
14 unbroken for at least 30 years has a marketable record title  
15 to the land, as defined in [section 4] and subject only to  
16 the interests stated in [section 6].

17 Section 3. Rule of construction. This act shall be  
18 liberally construed to effect its purpose.

19 Section 4. Definitions. As used in this act the  
20 following definitions apply:

21 (1) "Marketable record title" means a record title, as  
22 provided in [section 5], which operates to extinguish those  
23 interests and claims existing prior to the effective date of  
24 the root of title, as provided by [section 7].

25 (2) "Muniments" means the records of title

1 transactions in the chain of title to land held by a person  
2 which purport to create the interest in land claimed by him  
3 and upon which he relies as a basis for the marketability of  
4 his title, commencing with the root of title and including  
5 all subsequent transactions.

6 (3) "Person dealing with land" means a purchaser of  
7 any estate or interest therein, a mortgagee, a levying or  
8 attaching creditor, a land contract vendee, or any other  
9 person, corporation, or entity seeking to acquire an estate  
10 or interest therein or impose a lien thereon.

11 (4) "Records" means probate and other official public  
12 records, as well as records in the office of the clerk and  
13 recorder.

14 (5) "Recording", when applied to the official public  
15 records of a probate or other court, includes filing.

16 (6) "Root of title" means that conveyance or other  
17 title transaction in the chain of title to land held by a  
18 person which was the most recent to be recorded as of a date  
19 at least 30 years prior to the time when marketability is  
20 being determined and which purports to create the interest  
21 in land claimed by him and upon which he relies as a basis  
22 for the marketability of his title. The effective date of  
23 the root of title is the date on which it is recorded.

24 (7) "Specifically identified" documents are those  
25 recorded and described by the correct volume and page number

1 of recording.

2 (8) "Title transaction" means any transaction  
3 affecting title to any interest in land, including title by  
4 will or descent, title by tax deed or deed by trustee,  
5 referee, guardian, executor, administrator, master in  
6 chancery, sheriff, or decree of any court, as well as by  
7 deed, contract for sale, or mortgage.

8 Section 5. Marketable record title. (1) A person  
9 having the legal capacity to own land in this state who has  
10 a chain of record title to land which is unbroken for at  
11 least 30 years has a marketable record title to the land, as  
12 defined in [section 4] and subject only to the interests  
13 stated in [section 6].

14 (2) A person has an unbroken chain of record title to  
15 land when, at the time marketability is being determined and  
16 with nothing of record purporting to divest him of the land,  
17 the official public records disclose a conveyance or other  
18 title transaction at least 30 years old which purports to  
19 create the interest in the land either in:

20 (a) the person claiming it; or

21 (b) another person from whom, by one or more  
22 conveyances or other recorded title transactions, it became  
23 vested in the person claiming it.

24 Section 6. Interests to which marketable title is  
25 subject. A marketable record title is subject to:

1 (1) all interests which are specifically identified  
2 and defects which are inherent in the muniments of which the  
3 chain of record title is formed. A general reference in the  
4 muniments to easements, use restrictions, or other interests  
5 created prior to the root of title is not sufficient to  
6 preserve them unless a specific identification has been made  
7 to a recorded title transaction which created the easement,  
8 use restriction, or other interest.

9 (2) all interests preserved by the filing of proper  
10 notice or by possession by the same owner continuously for a  
11 period of at least 30 years, in accordance with [section 8];

12 (3) the rights of any person arising from a period of  
13 adverse possession or user which was in whole or in part  
14 subsequent to the effective date of the root of title and  
15 which is preserved by possession or filing at the time of  
16 the claimant's title search;

17 (4) the rights of any person in hostile possession at  
18 the time of the title search; and

19 (5) the exceptions set forth in [section 13].

20 Section 7. Interests extinguished by marketable title.  
21 Subject only to the interests stated in [section 6], a  
22 marketable record title is held by its owner and shall be  
23 taken by a person dealing with the land free and clear of  
24 all interests, claims, or charges whatever if their  
25 existence depends upon an act, transaction, event, or

1 omission that occurred prior to the effective date of the  
 2 root of title. All such interests, claims, or charges,  
 3 however denominated, whether legal or equitable, whether  
 4 present or future, whether asserted by a person sui juris or  
 5 under a disability, and whether the person is within or  
 6 without the state, natural or corporate, or private or  
 7 governmental, are void.

8 Section 8. Preservation of interests in land. (1) A  
 9 person claiming an interest in land may preserve and keep  
 10 effective the interest by recording a notice of it in  
 11 writing. The notice preserves the claim of right or interest  
 12 for a period of no more than 30 years after the date it is  
 13 recorded unless it is recorded again as provided by this  
 14 section. To be effective the notice must be recorded during  
 15 the 30-year period immediately following the effective date  
 16 of the root of title to the land which is held by a person  
 17 whose record title to the land would otherwise be  
 18 marketable. No disability or lack of knowledge of any kind  
 19 may suspend the running of the 30-year period. The notice  
 20 must also comply with the requirements of [section 9] and  
 21 may be recorded by the claimant or by a person acting on  
 22 behalf of a claimant who is:

- 23 (a) under a disability;
- 24 (b) unable to assert a claim on his own behalf; or
- 25 (c) one of a class but whose identity cannot be

1 established or is uncertain at the time the notice is  
 2 recorded.

3 (2) If the same record owner of any possessory  
 4 interest in land has been in possession of the land  
 5 continuously for a period of at least 30 years, during which  
 6 time no title transaction with respect to the interest  
 7 appears of record in his chain of title, no notice has been  
 8 recorded by him or on his behalf as provided in subsection  
 9 (1) of this section, and his possession continues to the  
 10 time when marketability is being determined, then the period  
 11 of his possession is equivalent to the recording of a notice  
 12 immediately preceding the termination of the 30-year period  
 13 described in subsection (1) of this section.

14 Section 9. Contents of notice. (1) To be effective and  
 15 be entitled to record, the notice required by [section 8]  
 16 shall be specifically entitled: "NOTICE OF CLAIM OF INTEREST  
 17 IN REAL PROPERTY".

18 (2) The notice shall contain:  
 19 (a) the name or description of the claimant and the  
 20 name and post-office address of the person filing the claim;  
 21 (b) the name and post-office address of an owner or  
 22 the name and post-office address of the person in whose name  
 23 the property is assessed on the last complete tax assessment  
 24 roll of the county at the time of filing who, for the  
 25 purpose of the notice, is an owner;

1 (c) a complete description, which shall be set forth  
 2 in particular terms and not by general reference, of all  
 3 land affected by the notice, but if the claim is founded  
 4 upon a recorded instrument, the description in the notice  
 5 may be the same as that contained in the recorded  
 6 instrument, provided it is sufficient to identify the  
 7 property;

8 (d) a statement of the claim showing the nature,  
 9 description, and extent of the claim, except that it is not  
 10 necessary to show the amount of a claim for money or the  
 11 term of payment; and

12 (e) if the claim is based on an instrument of record,  
 13 a description of the instrument sufficient to identify it,  
 14 including reference to the book and page in which it is  
 15 recorded.

16 (3) The notice shall be acknowledged as deeds are  
 17 acknowledged for record.

18 Section 10. Recording of notice. (1) The notice shall  
 19 be recorded in the office of the clerk and recorder in each  
 20 county where the land described in it is located. The clerk  
 21 shall accept all notices presented for recordation which  
 22 describe land situated in the county in which he serves.

23 (2) The clerk shall record the notice in the book of  
 24 deeds. The notice shall be indexed in an index of notice of  
 25 claims. The index shall be labeled: "Claims of Interest in

1 Real Property". The pages of the index shall be divided into  
 2 six columns, headed respectively:

- 3 (a) "names of claimants";
- 4 (b) "names of owners";
- 5 (c) "date of notice";
- 6 (d) "where recorded";
- 7 (e) "date recorded"; and
- 8 (f) "description".

9 (3) The clerk shall charge the same fee for recording  
 10 the notice as is charged for recording a deed.

11 Section 11. Copy of notice to purported owner --  
 12 certificate of mailing. (1) Upon recording a notice of claim  
 13 of interest in real property, the clerk and recorder shall  
 14 mail by certified mail a true copy of the notice to the  
 15 purported owner of the property, as stated in the notice. If  
 16 the notice names purported owners having more than one  
 17 address, the person filing it shall furnish a true copy of  
 18 the notice for each address stated, and the clerk shall send  
 19 a copy to the purported owners named at each address. The  
 20 fee for each copy of the notice mailed is \$1.

21 (2) The clerk shall enter on the original notice  
 22 before recording it a certificate that copies have been  
 23 mailed to the purported owner as required by subsection (1)  
 24 of this section. The certificate is sufficient if it reads  
 25 substantially as follows:

1 I hereby certify that I did on \_\_\_\_\_, mail  
2 by certified mail a copy of the foregoing notice to each of  
3 the following at the address stated:

4 \_\_\_\_\_  
5 Clerk and Recorder of \_\_\_\_\_  
6 County, Montana  
7 By: \_\_\_\_\_  
8 \_\_\_\_\_  
9 Deputy Clerk

10 (3) Failure of a purported owner to receive the mailed  
11 notice does not affect the validity of the notice or vitiate  
12 the effect of the filing of the notice.

13 Section 12. Slanderous notice prohibited. No person  
14 may use the privilege of filing notices under this act for  
15 the purpose of slandering the title to real estate. If the  
16 court, in an action to quiet title to real estate, finds  
17 that a person has filed a claim for the purpose of  
18 slandering title to the real estate, it shall award the  
19 plaintiff all the costs of the action, including attorneys'  
20 fees fixed by the court, and all damages sustained by him.

21 Section 13. Interests not barred by act. This act may  
22 not be applied to bar or extinguish:

23 (1) a lessor or his successor or reversioner of his  
24 right to possession on the expiration of a lease or a lessee

1 or his successor of his rights in and to a lease;

2 (2) an easement or interest in the nature of an  
3 easement, the existence of which is clearly observable by  
4 physical evidence of its use, an easement or interest in the  
5 nature of an easement created or held for a public utility  
6 purpose, or an easement or interest in the nature of an  
7 easement created or held by the state or a political  
8 subdivision, body politic, or agency of the state;

9 (3) an easement or interest in the nature of an  
10 easement or rights appurtenant to it granted, excepted, or  
11 reserved by a recorded instrument creating it, including  
12 rights for future use, if the existence of the easement or  
13 interest is evidenced by the location of any pipe, valve,  
14 road, wire, cable, conduit, duct, sewer, track, pole, tower,  
15 or other physical facility beneath, upon, or above any part  
16 of the land described in the instrument, whether or not the  
17 existence of the facility is observable;

18 (4) use restrictions or area agreements which are part  
19 of a plan for subdivision development;

20 (5) decrees, claims, appropriations, or declarations  
21 relating to water rights;

22 (6) a mineral, coal, or royalty interest, including  
23 development, mining, production, or other rights related to  
24 it, which has been severed from the fee simple title of the  
25 land; or

1 (7) a right, title, or interest of the United States.

2 Section 14. Effect of act on other laws governing  
3 limitations of actions or recording. Nothing contained in  
4 this [act] may be construed to extend the period for  
5 bringing an action or for doing any other required act under  
6 any statute of limitations or, except as specifically  
7 provided, to affect the operation of any statutes governing  
8 the effect of recording or the failure to record any  
9 instrument affecting land. It is the intent of this act that  
10 nothing contained in it be interpreted to revive or extend  
11 the period of filing a claim or bringing an action that may  
12 be limited or barred by any other statute.

13 Section 15. Two-year extension of thirty-year period.  
14 If the 30-year period specified in this act has expired  
15 prior to 2 years after July 1, 1977, the period is extended  
16 for 2 years after July 1, 1977.

-End-

Approved by Committee  
on Judiciary

1 HOUSE BILL NO. 713  
2 INTRODUCED BY RAMIREZ, PORTER, FAGG, MELOY  
3  
4 A BILL FOR AN ACT ENTITLED: "THE MONTANA MARKETABLE TITLE  
5 ACT OF 1977."  
6  
7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
8 Section 1. Short title. This act may be cited as "The  
9 Montana Marketable Title Act of 1977".  
10 Section 2. Purpose. The purpose of this act is to  
11 simplify and facilitate transactions in land by providing  
12 that a person having the legal capacity to own land in this  
13 state who has a chain of record title to land which is  
14 unbroken for at least 30 years has a marketable record title  
15 to the land, as defined in [section 4] and subject only to  
16 the interests stated in [section 6].  
17 Section 3. Rule of construction. This act shall be  
18 liberally construed to effect its purpose.  
19 Section 4. Definitions. As used in this act the  
20 following definitions apply:  
21 (1) "Marketable record title" means a record title, as  
22 provided in [section 5], which operates to extinguish those  
23 interests and claims existing prior to the effective date of  
24 the root of title, as provided by [section 7].  
25 (2) "Muniments" means the records of title

1 transactions in the chain of title to land held by a person  
2 which purport to create the interest in land claimed by him  
3 and upon which he relies as a basis for the marketability of  
4 his title, commencing with the root of title and including  
5 all subsequent transactions.  
6 (3) "Person dealing with land" means a purchaser of  
7 any estate or interest therein, a mortgagee, a levying or  
8 attaching creditor, a land contract vendee, or any other  
9 person, corporation, or entity seeking to acquire an estate  
10 or interest therein or impose a lien thereon.  
11 (4) "Records" means probate and other official public  
12 records, as well as records in the office of the clerk and  
13 recorder.  
14 (5) "Recording", when applied to the official public  
15 records of a probate or other court, includes filing.  
16 (6) "Root of title" means that conveyance or other  
17 title transaction in the chain of title to land held by a  
18 person which was the most recent to be recorded as of a date  
19 at least 30 years prior to the time when marketability is  
20 being determined and which purports to create the interest  
21 in land claimed by him and upon which he relies as a basis  
22 for the marketability of his title. The effective date of  
23 the root of title is the date on which it is recorded.  
24 (7) "Specifically identified" documents are those  
25 recorded and described by the correct volume and page number

1 of recording.

2 (8) "Title transaction" means any transaction  
3 affecting title to any interest in land, including title by  
4 will or descent, title by tax deed or deed by trustee,  
5 referee, guardian, executor, administrator, master in  
6 chancery, sheriff, or decree of any court, as well as by  
7 deed, contract for sale, or mortgage.

8 Section 5. Marketable record title. (1) A person  
9 having the legal capacity to own land in this state who has  
10 a chain of record title to land which is unbroken for at  
11 least 30 years has a marketable record title to the land, as  
12 defined in [section 4] and subject only to the interests  
13 stated in [section 6].

14 (2) A person has an unbroken chain of record title to  
15 land when, at the time marketability is being determined and  
16 with nothing of record purporting to divest him of the land,  
17 the official public records disclose a conveyance or other  
18 title transaction at least 30 years old which purports to  
19 create the interest in the land either in:

- 20 (a) the person claiming it; or
- 21 (b) another person from whom, by one or more  
22 conveyances or other recorded title transactions, it became  
23 vested in the person claiming it.

24 Section 6. Interests to which marketable title is  
25 subject. A marketable record title is subject to:

1 (1) all interests which are specifically identified  
2 and defects which are inherent in the muniments of which the  
3 chain of record title is formed. A general reference in the  
4 muniments to easements, use restrictions, or other interests  
5 created prior to the root of title is not sufficient to  
6 preserve them unless a specific identification has been made  
7 to a recorded title transaction which created the easement,  
8 use restriction, or other interest.

9 (2) all interests preserved by the filing of proper  
10 notice or by possession by the same owner continuously for a  
11 period of at least 30 years, in accordance with [section 8];

12 (3) the rights of any person arising from a period of  
13 adverse possession or user which was in whole or in part  
14 subsequent to the effective date of the root of title and  
15 which is preserved by possession or filing at the time of  
16 the claimant's title search;

17 (4) the rights of any person in hostile possession at  
18 the time of the title search; and

19 (5) the exceptions set forth in [section 13].

20 Section 7. Interests extinguished by marketable title.  
21 Subject only to the interests stated in [section 6], a  
22 marketable record title is held by its owner and shall be  
23 taken by a person dealing with the land free and clear of  
24 all interests, claims, or charges whatever if their  
25 existence depends upon an act, transaction, event, or



1 omission that occurred prior to the effective date of the  
 2 root of title. All such interests, claims, or charges,  
 3 however denominated, whether legal or equitable, whether  
 4 present or future, whether asserted by a person sui juris or  
 5 under a disability, and whether the person is within or  
 6 without the state, natural or corporate, or private or  
 7 governmental, are void.

8 Section 8. Preservation of interests in land. (1) A  
 9 person claiming an interest in land may preserve and keep  
 10 effective the interest by recording a notice of it in  
 11 writing. The notice preserves the claim of right or interest  
 12 for a period of no more than 30 years after the date it is  
 13 recorded unless it is recorded again as provided by this  
 14 section. To be effective the notice must be recorded during  
 15 the 30-year period immediately following the effective date  
 16 of the root of title to the land which is held by a person  
 17 whose record title to the land would otherwise be  
 18 marketable. No disability or lack of knowledge of any kind  
 19 may suspend the running of the 30-year period. The notice  
 20 must also comply with the requirements of [section 9] and  
 21 may be recorded by the claimant or by a person acting on  
 22 behalf of a claimant who is:

- 23 (a) under a disability;
- 24 (b) unable to assert a claim on his own behalf; or
- 25 (c) one of a class but whose identity cannot be

1 established or is uncertain at the time the notice is  
 2 recorded.

3 (2) If the same record owner of any possessory  
 4 interest in land has been in possession of the land  
 5 continuously for a period of at least 30 years, during which  
 6 time no title transaction with respect to the interest  
 7 appears of record in his chain of title, no notice has been  
 8 recorded by him or on his behalf as provided in subsection  
 9 (1) of this section, and his possession continues to the  
 10 time when marketability is being determined, then the period  
 11 of his possession is equivalent to the recording of a notice  
 12 immediately preceding the termination of the 30-year period  
 13 described in subsection (1) of this section.

14 Section 9. Contents of notice. (1) To be effective and  
 15 be entitled to record, the notice required by [section 8]  
 16 shall be specifically entitled: "NOTICE OF CLAIM OF INTEREST  
 17 IN REAL PROPERTY".

18 (2) The notice shall contain:

- 19 (a) the name or description of the claimant and the  
 20 name and post-office address of the person filing the claim;
- 21 (b) the name and post-office address of an owner or  
 22 the name and post-office address of the person in whose name  
 23 the property is assessed on the last complete tax assessment  
 24 roll of the county at the time of filing who, for the  
 25 purpose of the notice, is an owner;

1 (c) a complete description, which shall be set forth  
 2 in particular terms and not by general reference, of all  
 3 land affected by the notice, but if the claim is founded  
 4 upon a recorded instrument, the description in the notice  
 5 may be the same as that contained in the recorded  
 6 instrument, provided it is sufficient to identify the  
 7 property;

8 (d) a statement of the claim showing the nature,  
 9 description, and extent of the claim, except that it is not  
 10 necessary to show the amount of a claim for money or the  
 11 term of payment; and

12 (e) if the claim is based on an instrument of record,  
 13 a description of the instrument sufficient to identify it,  
 14 including reference to the book and page in which it is  
 15 recorded.

16 (3) The notice shall be acknowledged as deeds are  
 17 acknowledged for record.

18 Section 10. Recording of notice. (1) The notice shall  
 19 be recorded in the office of the clerk and recorder in each  
 20 county where the land described in it is located. The clerk  
 21 shall accept all notices presented for recordation which  
 22 describe land situated in the county in which he serves.

23 (2) The clerk shall record the notice in the book of  
 24 deeds. The notice shall be indexed in an index of notice of  
 25 claims. The index shall be labeled: "Claims of Interest in

1 Real Property". The pages of the index shall be divided into  
 2 six columns, headed respectively:

- 3 (a) "names of claimants";
- 4 (b) "names of owners";
- 5 (c) "date of notice";
- 6 (d) "where recorded";
- 7 (e) "date recorded"; and
- 8 (f) "description".

9 (3) The clerk shall charge the same fee for recording  
 10 the notice as is charged for recording a deed.

11 Section 11. Copy of notice to purported owner --  
 12 certificate of mailing. (1) Upon recording a notice of claim  
 13 of interest in real property, the clerk and recorder shall  
 14 mail by certified mail a true copy of the notice to the  
 15 purported owner of the property, as stated in the notice. If  
 16 the notice names purported owners having more than one  
 17 address, the person filing it shall furnish a true copy of  
 18 the notice for each address stated, and the clerk shall send  
 19 a copy to the purported owners named at each address. The  
 20 fee for each copy of the notice mailed is \$1.

21 (2) The clerk shall enter on the original notice  
 22 before recording it a certificate that copies have been  
 23 mailed to the purported owner as required by subsection (1)  
 24 of this section. The certificate is sufficient if it reads  
 25 substantially as follows:

1 I hereby certify that I did on \_\_\_\_\_, mail  
2 by certified mail a copy of the foregoing notice to each of  
3 the following at the address stated:

4 \_\_\_\_\_  
5 Clerk and Recorder of \_\_\_\_\_  
6 County, Montana  
7 By: \_\_\_\_\_  
8 \_\_\_\_\_  
9 Deputy Clerk

10 (3) Failure of a purported owner to receive the mailed  
11 notice does not affect the validity of the notice or vitiate  
12 the effect of the filing of the notice.

13 Section 12. Slanderous notice prohibited. No person  
14 may use the privilege of filing notices under this act for  
15 the purpose of slandering the title to real estate. If the  
16 court, in an action to quiet title to real estate, finds  
17 that a person has filed a claim for the purpose of  
18 slandering title to the real estate, it shall award the  
19 plaintiff all the costs of the action, including attorneys'  
20 fees fixed by the court, and all damages sustained by him.

21 Section 13. Interests not barred by act. This act may  
22 not be applied to bar or extinguish:

23 (1) a lessor or his successor or reversioner of his  
24 right to possession on the expiration of a lease or a lessee

1 or his successor of his rights in and to a lease;

2 (2) an easement or interest in the nature of an  
3 easement, the existence of which is clearly, observable by  
4 physical evidence of its use, an easement or interest in the  
5 nature of an easement created or held for a public utility  
6 purpose, or an easement or interest in the nature of an  
7 easement created or held by the state or a political  
8 subdivision, body politic, or agency of the state;

9 (3) an easement or interest in the nature of an  
10 easement or rights appurtenant to it granted, excepted, or  
11 reserved by a recorded instrument creating it, including  
12 rights for future use, if the existence of the easement or  
13 interest is evidenced by the location of any pipe, valve,  
14 road, wire, cable, conduit, duct, sewer, track, pole, tower,  
15 or other physical facility beneath, upon, or above any part  
16 of the land described in the instrument, whether or not the  
17 existence of the facility is observable;

18 (4) use restrictions or area agreements which are part  
19 of a plan for subdivision development;

20 (5) decrees, claims, appropriations, or declarations  
21 relating to water rights;

22 (6) a mineral, coal, LIMBER, or royalty interest,  
23 including development, mining, production, or other rights  
24 related to it, which has been severed from the fee simple  
25 title of the land; or

1 (7) a right, title, or interest of the United States.

2 Section 14. Effect of act on other laws governing  
3 limitations of actions or recording. Nothing contained in  
4 this [act] may be construed to extend the period for  
5 bringing an action or for doing any other required act under  
6 any statute of limitations or, except as specifically  
7 provided, to affect the operation of any statutes governing  
8 the effect of recording or the failure to record any  
9 instrument affecting land. It is the intent of this act that  
10 nothing contained in it be interpreted to revive or extend  
11 the period of filing a claim or bringing an action that may  
12 be limited or barred by any other statute.

13 Section 15. Two-year extension of thirty-year period.  
14 If the 30-year period specified in this act has expired  
15 prior to 2 years after July 1, 1977, the period is extended  
16 for 2 years after July 1, 1977.

-End-

## 1 HOUSE BILL NO. 713

2 INTRODUCED BY RAMIREZ, PORTER, FAGG, MELOY

3

4 A BILL FOR AN ACT ENTITLED: "THE MONTANA MARKETABLE TITLE  
5 ACT OF 1977."

6

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

8 Section 1. Short title. This act may be cited as "The  
9 Montana Marketable Title Act of 1977".10 Section 2. Purpose. The purpose of this act is to  
11 simplify and facilitate transactions in land by providing  
12 that a person having the legal capacity to own land in this  
13 state who has a chain of record title to land which is  
14 unbroken for at least 30 years has a marketable record title  
15 to the land, as defined in [section 4] and subject only to  
16 the interests stated in [section 6].17 Section 3. Rule of construction. This act shall be  
18 liberally construed to effect its purpose.19 Section 4. Definitions. As used in this act the  
20 following definitions apply:21 (1) "Marketable record title" means a record title, as  
22 provided in [section 5], which operates to extinguish those  
23 interests and claims existing prior to the effective date of  
24 the root of title, as provided by [section 7].

25 (2) "Muniments" means the records of title

1 transactions in the chain of title to land held by a person  
2 which purport to create the interest in land claimed by him  
3 and upon which he relies as a basis for the marketability of  
4 his title, commencing with the root of title and including  
5 all subsequent transactions.6 (3) "Person dealing with land" means a purchaser of  
7 any estate or interest therein, a mortgagee, a levying or  
8 attaching creditor, a land contract vendee, or any other  
9 person, corporation, or entity seeking to acquire an estate  
10 or interest therein or impose a lien thereon.11 (4) "Records" means probate and other official public  
12 records, as well as records in the office of the clerk and  
13 recorder.14 (5) "Recording", when applied to the official public  
15 records of a probate or other court, includes filing.16 (6) "Root of title" means that conveyance or other  
17 title transaction in the chain of title to land held by a  
18 person which was the most recent to be recorded as of a date  
19 at least 30 years prior to the time when marketability is  
20 being determined and which purports to create the interest  
21 in land claimed by him and upon which he relies as a basis  
22 for the marketability of his title. The effective date of  
23 the root of title is the date on which it is recorded.24 (7) "Specifically identified" documents are those  
25 recorded and described by the correct volume and page number

1 of recording.

2 (8) "Title transaction" means any transaction  
 3 affecting title to any interest in land, including title by  
 4 will or descent, title by tax deed or deed by trustee,  
 5 referee, guardian, executor, administrator, master in  
 6 chancery, sheriff, or decree of any court, as well as by  
 7 deed, contract for sale, or mortgage.

8 Section 5. Marketable record title. (1) A person  
 9 having the legal capacity to own land in this state who has  
 10 a chain of record title to land which is unbroken for at  
 11 least 30 years has a marketable record title to the land, as  
 12 defined in [section 4] and subject only to the interests  
 13 stated in [section 6].

14 (2) A person has an unbroken chain of record title to  
 15 land when, at the time marketability is being determined and  
 16 with nothing of record purporting to divest him of the land,  
 17 the official public records disclose a conveyance or other  
 18 title transaction at least 30 years old which purports to  
 19 create the interest in the land either in:

- 20 (a) the person claiming it; or
- 21 (b) another person from whom, by one or more  
 22 conveyances or other recorded title transactions, it became  
 23 vested in the person claiming it.

24 Section 6. Interests to which marketable title is  
 25 subject. A marketable record title is subject to:

1 (1) all interests which are specifically identified  
 2 and defects which are inherent in the muniments of which the  
 3 chain of record title is formed. A general reference in the  
 4 muniments to easements, use restrictions, or other interests  
 5 created prior to the root of title is not sufficient to  
 6 preserve them unless a specific identification has been made  
 7 to a recorded title transaction which created the easement,  
 8 use restriction, or other interest.

9 (2) all interests preserved by the filing of proper  
 10 notice or by possession by the same owner continuously for a  
 11 period of at least 30 years, in accordance with [section 8];

12 (3) the rights of any person arising from a period of  
 13 adverse possession or user which was in whole or in part  
 14 subsequent to the effective date of the root of title and  
 15 which is preserved by possession or filing at the time of  
 16 the claimant's title search;

17 (4) the rights of any person in hostile possession at  
 18 the time of the title search; and

19 (5) the exceptions set forth in [section 13].

20 Section 7. Interests extinguished by marketable title.  
 21 Subject only to the interests stated in [section 6], a  
 22 marketable record title is held by its owner and shall be  
 23 taken by a person dealing with the land free and clear of  
 24 all interests, claims, or charges whatever if their  
 25 existence depends upon an act, transaction, event, or

1 omission that occurred prior to the effective date of the  
 2 root of title. All such interests, claims, or charges,  
 3 however denominated, whether legal or equitable, whether  
 4 present or future, whether asserted by a person sui juris or  
 5 under a disability, and whether the person is within or  
 6 without the state, natural or corporate, or private or  
 7 governmental, are void.

8 Section 8. Preservation of interests in land. (1) A  
 9 person claiming an interest in land may preserve and keep  
 10 effective the interest by recording a notice of it in  
 11 writing. The notice preserves the claim of right or interest  
 12 for a period of no more than 30 years after the date it is  
 13 recorded unless it is recorded again as provided by this  
 14 section. To be effective the notice must be recorded during  
 15 the 30-year period immediately following the effective date  
 16 of the root of title to the land which is held by a person  
 17 whose record title to the land would otherwise be  
 18 marketable. No disability or lack of knowledge of any kind  
 19 may suspend the running of the 30-year period. The notice  
 20 must also comply with the requirements of [section 9] and  
 21 may be recorded by the claimant or by a person acting on  
 22 behalf of a claimant who is:

- 23 (a) under a disability;
- 24 (b) unable to assert a claim on his own behalf; or
- 25 (c) one of a class but whose identity cannot be

1 established or is uncertain at the time the notice is  
 2 recorded.

3 (2) If the same record owner of any possessory  
 4 interest in land has been in possession of the land  
 5 continuously for a period of at least 30 years, during which  
 6 time no title transaction with respect to the interest  
 7 appears of record in his chain of title, no notice has been  
 8 recorded by him or on his behalf as provided in subsection  
 9 (1) of this section, and his possession continues to the  
 10 time when marketability is being determined, then the period  
 11 of his possession is equivalent to the recording of a notice  
 12 immediately preceding the termination of the 30-year period  
 13 described in subsection (1) of this section.

14 Section 9. Contents of notice. (1) To be effective and  
 15 be entitled to record, the notice required by [section 8]  
 16 shall be specifically entitled: "NOTICE OF CLAIM OF INTEREST  
 17 IN REAL PROPERTY".

18 (2) The notice shall contain:  
 19 (a) the name or description of the claimant and the  
 20 name and post-office address of the person filing the claim;  
 21 (b) the name and post-office address of an owner or  
 22 the name and post-office address of the person in whose name  
 23 the property is assessed on the last complete tax assessment  
 24 roll of the county at the time of filing who, for the  
 25 purpose of the notice, is an owner;

1 (c) a complete description, which shall be set forth  
 2 in particular terms and not by general reference, of all  
 3 land affected by the notice, but if the claim is founded  
 4 upon a recorded instrument, the description in the notice  
 5 may be the same as that contained in the recorded  
 6 instrument, provided it is sufficient to identify the  
 7 property;

8 (d) a statement of the claim showing the nature,  
 9 description, and extent of the claim, except that it is not  
 10 necessary to show the amount of a claim for money or the  
 11 term of payment; and

12 (e) if the claim is based on an instrument of record,  
 13 a description of the instrument sufficient to identify it,  
 14 including reference to the book and page in which it is  
 15 recorded.

16 (3) The notice shall be acknowledged as deeds are  
 17 acknowledged for record.

18 Section 10. Recording of notice. (1) The notice shall  
 19 be recorded in the office of the clerk and recorder in each  
 20 county where the land described in it is located. The clerk  
 21 shall accept all notices presented for recordation which  
 22 describe land situated in the county in which he serves.

23 (2) The clerk shall record the notice in the book of  
 24 deeds. The notice shall be indexed in an index of notice of  
 25 claims. The index shall be labeled: "Claims of Interest in

1 Real Property". The pages of the index shall be divided into  
 2 six columns, headed respectively:

- 3 (a) "names of claimants";
- 4 (b) "names of owners";
- 5 (c) "date of notice";
- 6 (d) "where recorded";
- 7 (e) "date recorded"; and
- 8 (f) "description".

9 (3) The clerk shall charge the same fee for recording  
 10 the notice as is charged for recording a deed.

11 Section 11. Copy of notice to purported owner --  
 12 certificate of mailing. (1) Upon recording a notice of claim  
 13 of interest in real property, the clerk and recorder shall  
 14 mail by certified mail a true copy of the notice to the  
 15 purported owner of the property, as stated in the notice. If  
 16 the notice names purported owners having more than one  
 17 address, the person filing it shall furnish a true copy of  
 18 the notice for each address stated, and the clerk shall send  
 19 a copy to the purported owners named at each address. The  
 20 fee for each copy of the notice mailed is \$1.

21 (2) The clerk shall enter on the original notice  
 22 before recording it a certificate that copies have been  
 23 mailed to the purported owner as required by subsection (1)  
 24 of this section. The certificate is sufficient if it reads  
 25 substantially as follows:



1 I hereby certify that I did on \_\_\_\_\_, mail  
2 by certified mail a copy of the foregoing notice to each of  
3 the following at the address stated:

4 \_\_\_\_\_  
5 Clerk and Recorder of \_\_\_\_\_  
6 County, Montana  
7 By: \_\_\_\_\_  
8 \_\_\_\_\_  
9 Deputy Clerk

10 (3) Failure of a purported owner to receive the mailed  
11 notice does not affect the validity of the notice or vitiate  
12 the effect of the filing of the notice.

13 Section 12. Slanderous notice prohibited. No person  
14 may use the privilege of filing notices under this act for  
15 the purpose of slandering the title to real estate. If the  
16 court, in an action to quiet title to real estate, finds  
17 that a person has filed a claim for the purpose of  
18 slandering title to the real estate, it shall award the  
19 plaintiff all the costs of the action, including attorneys'  
20 fees fixed by the court, and all damages sustained by him.

21 Section 13. Interests not barred by act. This act may  
22 not be applied to bar or extinguish:

23 (1) a lessor or his successor or reversioner of his  
24 right to possession on the expiration of a lease or a lessee

1 or his successor of his rights in and to a lease;

2 (2) an easement or interest in the nature of an  
3 easement, the existence of which is clearly observable by  
4 physical evidence of its use, an easement or interest in the  
5 nature of an easement created or held for a public utility  
6 purpose, or an easement or interest in the nature of an  
7 easement created or held by the state or a political  
8 subdivision, body politic, or agency of the state;

9 (3) an easement or interest in the nature of an  
10 easement or rights appurtenant to it granted, excepted, or  
11 reserved by a recorded instrument creating it, including  
12 rights for future use, if the existence of the easement or  
13 interest is evidenced by the location of any pipe, valve,  
14 road, wire, cable, conduit, duct, sewer, track, pole, tower,  
15 or other physical facility beneath, upon, or above any part  
16 of the land described in the instrument, whether or not the  
17 existence of the facility is observable;

18 (4) A CONSERVATION EASEMENT AS DEFINED IN 62-603(1);  
19 (4)(5) use restrictions or area agreements which are  
20 part of a plan for subdivision development;

21 (5)(6) decrees, claims, appropriations, or  
22 declarations relating to water rights;

23 (6)(7) a mineral, coal, TIMBER, SAND, GRAVEL, or  
24 royalty interest, including development, mining, production,  
25 or other rights related to it, which has been severed from

1 the fee simple title of the land; or  
2 ~~(7)(B)~~ a right, title, or interest of the United  
3 States.

4 Section 14. Effect of act on other laws governing  
5 limitations of actions or recording. Nothing contained in  
6 this [act] may be construed to extend the period for  
7 bringing an action or for doing any other required act under  
8 any statute of limitations or, except as specifically  
9 provided, to affect the operation of any statutes governing  
10 the effect of recording or the failure to record any  
11 instrument affecting land. It is the intent of this act that  
12 nothing contained in it be interpreted to revive or extend  
13 the period of filing a claim or bringing an action that may  
14 be limited or barred by any other statute.

15 Section 15. Two-year extension of thirty-year period.  
16 If the 30-year period specified in this act has expired  
17 prior to 2 years after July 1, 1977, the period is extended  
18 for 2 years after July 1, 1977.

-End-