

1 *Senate* BILL NO. *225*
 2 INTRODUCED BY *Stony Dawson, Marilyn Peterson*
 3 *David Boylan, Lou Lockman, Phil Flynn, Nealy*

4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTIONS
 5 11-3867 AND 11-3876, R.C.M. 1947, TO ALLOW OFFERS AND
 6 CONTRACTS FOR SALE OR LEASE BEFORE A FINAL SUBDIVISION PLAT
 7 IS FILED OF RECORD."

8
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10 Section 1. Section 11-3867, R.C.M. 1947, is amended to
 11 read as follows:

12 "11-3867. Filing of subdivision plat with county
 13 recorder — review of final subdivision plats and
 14 certificates of survey by examining land surveyor. (1) The
 15 governing body may require that final subdivision plats and
 16 certificates of survey be reviewed for errors and omissions
 17 in calculation or drafting by an examining land surveyor
 18 before recording with the county clerk and recorder. When
 19 the survey data shown on the plat or certificate of survey
 20 meet the conditions set forth by or pursuant to this act,
 21 the examining land surveyor shall so certify in a printed or
 22 stamped certificate on the plat or certificate of survey;
 23 such certificate shall be signed by him.

24 No land surveyor shall act as an examining land
 25 surveyor in regard to a plat or certificate of survey in

1 which he has a financial or personal interest.

2 (2) The governing body shall examine every final
 3 subdivision plat and shall approve it when, and only when,
 4 it conforms to the conditions of approval set forth on the
 5 preliminary plat and to the terms of this act and
 6 regulations adopted pursuant thereto. The clerk and recorder
 7 of the county shall refuse to accept any plat for record
 8 that fails to have such approval in proper form.

9 (3) Every final subdivision plat must be filed for
 10 record with the county clerk and recorder before title to
 11 the subdivided land can be ~~sold or~~ transferred in any manner
 12 ~~or offered for sale or transfer.~~ If illegal transfers or
 13 ~~offers of any manner~~ are made, the county attorney shall
 14 commence action to enjoin further ~~sales,~~ transfers, or
 15 ~~offers of sale or transfer~~ and compel compliance with all
 16 provisions of this act. The cost of such action shall be
 17 imposed against the person transferring ~~or offering to~~
 18 ~~transfer~~ the property."

19 Section 2. Section 11-3876, R.C.M. 1947, is amended to
 20 read as follows:

21 "11-3876. Violation -- misdemeanor. Any person who
 22 violates any provision of this act or any local regulations
 23 adopted pursuant thereto shall be guilty of a misdemeanor
 24 and punishable by a fine of not less than one hundred
 25 dollars (\$100) or more than five hundred dollars (\$500) or

LC 0961/01

1 by imprisonment in a county jail for not more than three (3)
2 months, or by both fine and imprisonment. Each ~~sale~~ lease
3 or transfer ~~of title or offer for sale, lease or transfer~~
4 of each separate parcel of land in violation of any
5 provision of this act or any local regulation adopted
6 pursuant thereto shall be deemed a separate and distinct
7 offense."

-End-

Approved by Comm.
on Local Government

SENATE BILL NO. 225

INTRODUCED BY STORY, DEVINE, HANLEY, PETERSON,
DOVER, BOYLAN, LOWE, LOCKREM, GALT, FLYNN, HEALY

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTIONS
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Section 1. Section 11-3867, R.C.M. 1947, is amended to
read as follows:

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recorder -- review of final subdivision plats and
certificates of survey by examining land surveyor. (1) The
governing body may require that final subdivision plats and
certificates of survey be reviewed for errors and omissions
in calculation or drafting by an examining land surveyor
before recording with the county clerk and recorder. When
the survey data shown on the plat or certificate of survey
meet the conditions set forth by or pursuant to this act,
the examining land surveyor shall so certify in a printed or
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surveyor in regard to a plat or certificate of survey in
which he has a financial or personal interest.

(2) The governing body shall examine every final
subdivision plat and shall approve it when, and only when,
it conforms to the conditions of approval set forth on the
preliminary plat and to the terms of this act and
regulations adopted pursuant thereto. The clerk and recorder
of the county shall refuse to accept any plat for record
that fails to have such approval in proper form.

(3) Every final subdivision plat must be filed for
record with the county clerk and recorder before title to
the subdivided land can be ~~sold or~~ SOLD OR transferred in
any manner ~~or offered for sale or transfer~~ OR OFFERED FOR
SALE OR TRANSFER. If illegal transfers ~~or offers of any~~
~~manner~~ OR OFFERS OF ANY MANNER are made, the county attorney
shall commence action to enjoin further ~~sales,~~ SALES,
~~transfers, or offers of sale or transfer,~~ OR OFFERS OF SALE
OR TRANSFER and compel compliance with all provisions of
this act. The cost of such action shall be imposed against
the person transferring ~~or offering to transfer~~ OR OFFERING
TO TRANSFER the property.

(4) CONTRACTS OR OFFERS FOR SALE OF LAND PRIOR TO THE
FILING OF A FINAL SUBDIVISION PLAT OF RECORD WITH THE COUNTY
CLERK AND RECORDER SHALL BE LEGAL AND ARE EXEMPT FROM THE
PROVISIONS OF SUBSECTION (3), IF THE CONTRACT OR OFFER FOR

SECOND READING

1 SALE IS IN WRITING AND CONTAINS THE FOLLOWING LANGUAGE
2 CONSPICUOUSLY SET OUT THEREIN: "THE REAL PROPERTY WHICH IS
3 THE SUBJECT HEREOF HAS NOT BEEN FINALLY PLATED AND UNTIL A
4 FINAL PLAT HAS BEEN FILED WITH THE COUNTY CLERK AND
5 RECORDER, TITLE CANNOT BE TRANSFERRED IN ANY MANNER."

6 Section 2. Section 11-3876, R.C.M. 1947, is amended to
7 read as follows:

8 "11-3876. Violation — misdemeanor. Any person who
9 violates any provision of this act or any local regulations
10 adopted pursuant thereto shall be guilty of a misdemeanor
11 and punishable by a fine of not less than one hundred
12 dollars (\$100) or more than five hundred dollars (\$500) or
13 by imprisonment in a county jail for not more than three (3)
14 months, or by both fine and imprisonment. Each sale, lease
15 or transfer ~~of title, or offer for sale, lease, or transfer,~~
16 OR OFFER FOR SALE, LEASE, OR TRANSFER of each separate
17 parcel of land in violation of any provision of this act or
18 any local regulation adopted pursuant thereto shall be
19 deemed a separate and distinct offense."

-End-

SENATE BILL NO. 225

INTRODUCED BY STORY, DEVINE, MANLEY, PETERSON,
DOVER, BOYLAW, LOWE, LOCKHEM, GALT, FLYNN, HEALY

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING SECTIONS
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meet the conditions set forth by or pursuant to this act,
the examining land surveyor shall so certify in a printed or
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which he has a financial or personal interest.

(2) The governing body shall examine every final
subdivision plat and shall approve it when, and only when,
it conforms to the conditions of approval set forth on the
preliminary plat and to the terms of this act and
regulations adopted pursuant thereto. The clerk and recorder
of the county shall refuse to accept any plat for record
that fails to have such approval in proper form.

(3) Every final subdivision plat must be filed for
record with the county clerk and recorder before title to
the subdivided land can be ~~sold or~~ SOLD OR transferred in
any manner ~~or offered for sale or transfer~~ OR OFFERED FOR
SALE OR TRANSFER. If illegal transfers ~~or offers of any~~
~~manner~~ OR OFFERS OF ANY MANNER are made, the county attorney
shall commence action to enjoin further ~~sales,~~ SALES,
~~transfers, or offers of sale or transfer,~~ OR OFFERS OF SALE
OR TRANSFER and compel compliance with all provisions of
this act. The cost of such action shall be imposed against
the person transferring ~~or offering to transfer~~ OR OFFERING
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CLERK AND RECORDER SHALL BE LEGAL AND ARE EXEMPT FROM THE
PROVISIONS OF SUBSECTION (3), IF THE CONTRACT OR OFFER FOR

1 SALE IS IN WRITING AND CONTAINS THE FOLLOWING LANGUAGE
2 CONSPICUOUSLY SET OUT THEREIN: "THE REAL PROPERTY WHICH IS
3 THE SUBJECT HEREOF HAS NOT BEEN FINALLY PLATTED AND UNTIL A
4 FINAL PLAT HAS BEEN FILED WITH THE COUNTY CLERK AND
5 RECORDER, TITLE CANNOT BE TRANSFERRED IN ANY MANNER."

6 Section 2. Section 11-3876, R.C.M. 1947, is amended to
7 read as follows:

8 "11-3876. Violation — misdemeanor. Any person who
9 violates any provision of this act or any local regulations
10 adopted pursuant thereto shall be guilty of a misdemeanor
11 and punishable by a fine of not less than one hundred
12 dollars (\$100) or more than five hundred dollars (\$500) or
13 by imprisonment in a county jail for not more than three (3)
14 months, or by both fine and imprisonment. Each sale, lease
15 or transfer ~~of title, or offer for sale, lease, or transfer,~~
16 OR OFFER FOR SALE, LEASE, OR TRANSFER of each separate
17 parcel of land in violation of any provision of this act or
18 any local regulation adopted pursuant thereto shall be
19 deemed a separate and distinct offense."

-End-

HOUSE OF REPRESENTATIVES

April 6, 1977

HOUSE COMMITTEE ON NATURAL RESOURCES AMENDMENTS TO SENATE BILL 225

1. Amend title, line 6.

Following: "ALLOW"

Strike: "OFFERS AND"

2. Amend title, line 7.

Following: "SALE"

Strike: "OR LEASE"

3. Amend page 2, section 1, line 10.

Following: "(3)"

Strike: "Every"

Insert: "Except as provided in subsection (4), every"

4. Amend page 2, section 1, lines 13 and 14.

Following: "~~transfer~~"

Strike: "OR OFFERED FOR SALE OR TRANSFER"

5. Amend page 2, section 1, line 15.

Following: "manner"

Strike: "OR OFFERS"

6. Amend page 2, section 1, line 16.

Following: "SALES"

Strike: " / "

Insert: "or"

7. Amend page 2, section 1, lines 17 and 18.

Following: "~~transfer,~~"

Strike: "OR OFFERS OF SALE OR TRANSFER"

8. Amend page 2, section 1, lines 20 and 21.

Following: "~~transfer~~"

Strike: "OR OFFERING TO TRANSFER"

9. Amend page 2, line 22 through page 3, line 5.

Strike: subsection (4) in its entirety

Insert: "(4) After the preliminary plat of a subdivision has been approved or conditionally approved the subdivider may enter into contracts to sell lots in the proposed subdivision if all of the following conditions are met:

(a) that under the terms of the contracts the purchasers of lots in the proposed subdivision make any payments to an escrow agent which must be a bank or savings and loan association chartered to do business in the state of Montana.

(b) that under the terms of the contracts and the escrow agreement the payments made by purchasers of lots in the proposed subdivision may not be distributed by the escrow agent to the subdivider until the final plat of the subdivision is filed with the county clerk and recorder.

(c) that the contracts and the escrow agreement provide that if the final plat of the proposed subdivision is not filed with the county clerk

and recorder within two years of the preliminary plat approval, the escrow agent shall immediately refund to each purchaser any payments he has made under the contract, and

(d) that the contracts contain the following language conspicuously set out therein: 'The real property which is the subject hereof has not been finally platted, and until a final plat identifying the property has been filed with the county clerk and recorder, title to the property cannot be transferred in any manner.'

10. Amend page 3, section 2, line 16.

Following: line 15

Strike: "OR OFFER FOR SALE, LEASE, OR TRANSFER"

AS AMENDED

BE CONCURRED IN

1 SENATE BILL NO. 225

2 INTRODUCED BY STORY, DEVINE, MANLEY, PETERSON,

3 DOVER, BOYLAN, LOWE, LOCKREM, GALT, FLYNN, HEALY

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25 No land surveyor shall act as an examining land

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3 (2) The governing body shall examine every final
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6 preliminary plat and to the terms of this act and
7 regulations adopted pursuant thereto. The clerk and recorder
8 of the county shall refuse to accept any plat for record
9 that fails to have such approval in proper form.

10 (3) Every ~~EXCEPT AS PROVIDED IN SUBSECTION (4), EVERY~~
11 final subdivision plat must be filed for record with the
12 county clerk and recorder before title to the subdivided
13 land can be ~~sold--or~~ SOLD OR transferred in any manner or
14 ~~offered--for--sale--or--transfer~~ OR OFFERED FOR SALE OR
15 TRANSFER. If illegal transfers or offers of any manner OR
16 OFFERS OF ANY MANNER are made, the county attorney shall
17 commence action to enjoin further ~~sales~~ SALES OR
18 ~~transfers or offers of sale or transfers~~ OR OFFERS OF SALE
19 OR TRANSFER and compel compliance with all provisions of
20 this act. The cost of such action shall be imposed against
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 5 ~~FINAL PLAT HAS BEEN FILED WITH THE COUNTY CLERK AND~~
 6 ~~RECORDER, TITLE CANNOT BE TRANSFERRED IN ANY MANNER."~~

7 (4) AFTER THE PRELIMINARY PLAT OF A SUBDIVISION HAS
 8 BEEN APPROVED OR CONDITIONALLY APPROVED THE SUBDIVIDER MAY
 9 ENTER INTO CONTRACTS TO SELL LOTS IN THE PROPOSED
 10 SUBDIVISION IF ALL OF THE FOLLOWING CONDITIONS ARE MET:

11 (A) THAT UNDER THE TERMS OF THE CONTRACTS THE
 12 PURCHASERS OF LOTS IN THE PROPOSED SUBDIVISION MAKE ANY
 13 PAYMENTS TO AN ESCROW AGENT WHICH MUST BE A BANK OR SAVINGS
 14 AND LOAN ASSOCIATION CHARTERED TO DO BUSINESS IN THE STATE
 15 OF MONTANA.

16 (B) THAT UNDER THE TERMS OF THE CONTRACTS AND THE
 17 ESCROW AGREEMENT THE PAYMENTS MADE BY PURCHASERS OF LOTS IN
 18 THE PROPOSED SUBDIVISION MAY NOT BE DISTRIBUTED BY THE
 19 ESCROW AGENT TO THE SUBDIVIDER UNTIL THE FINAL PLAT OF THE
 20 SUBDIVISION IS FILED WITH THE COUNTY CLERK AND RECORDER.

21 (C) THAT THE CONTRACTS AND THE ESCROW AGREEMENT
 22 PROVIDE THAT IF THE FINAL PLAT OF THE PROPOSED SUBDIVISION
 23 IS NOT FILED WITH THE COUNTY CLERK AND RECORDER WITHIN TWO
 24 YEARS OF THE PRELIMINARY PLAT APPROVAL, THE ESCROW AGENT
 25 SHALL IMMEDIATELY REFUND TO EACH PURCHASER ANY PAYMENTS HE

1 HAS MADE UNDER THE CONTRACT, AND

2 (D) THAT THE CONTRACTS CONTAIN THE FOLLOWING LANGUAGE
 3 CONSPICUOUSLY SET OUT THEREIN: "THE REAL PROPERTY WHICH IS
 4 THE SUBJECT HEREOF HAS NOT BEEN FINALLY PLATTED, AND UNTIL A
 5 FINAL PLAT IDENTIFYING THE PROPERTY HAS BEEN FILED WITH THE
 6 COUNTY CLERK AND RECORDER, TITLE TO THE PROPERTY CANNOT BE
 7 TRANSFERRED IN ANY MANNER."

8 Section 2. Section 11-3876, R.C.M. 1947, is amended to
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 14 dollars (\$100) or more than five hundred dollars (\$500) or
 15 by imprisonment in a county jail for not more than three (3)
 16 months, or by both fine and imprisonment. Each ~~sale~~ SALE,
 17 lease or transfer ~~of title or offer for sale, lease or~~
 18 ~~transfer or offer for sale, lease or transfer~~ of each
 19 separate parcel of land in violation of any provision of
 20 this act or any local regulation adopted pursuant thereto
 21 shall be deemed a separate and distinct offense."

-End-