

HOUSE BILL 105

Introduced by Ellison

1/09	Introduced
1/10	Referred to Local Government
1/12	Hearing
2/03	Committee Report--Bill Passed as Amended
2/07	Taken from 2nd Reading
2/07	Rereferred to Local Government
2/09	Tabled in Committee

1 HOUSE BILL NO. 105
2 INTRODUCED BY E. Olson
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW FACSIMILE
5 COPIES OF CERTAIN DOCUMENTS TO BE RECORDED WITH THE COUNTY
6 CLERK AND RECORDER PENDING RECORDING WITHIN 5 DAYS OF THE
7 ORIGINAL DOCUMENT; AND AMENDING SECTIONS 7-4-2613 AND
8 72-16-503, MCA."

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

11 **Section 1.** Section 7-4-2613, MCA, is amended to read:

12 "7-4-2613. Documents subject to recording -- filing of
13 facsimile copies -- standards. (1) The county clerk must,
14 upon payment of his fees for the same, record, photograph,
15 or correctly copy, separately, in large and well-bound or to
16 be bound separate books, either in a fair hand or by
17 printing, typewriting, or photographic process or by the use
18 of prepared blank forms:

19 (1)(a) deeds, grants, transfers, certified copies of
20 final judgments or decrees partitioning or affecting the
21 title or possession of real property any part of which is
22 situated in the county, contracts to sell or convey real
23 estate and mortgages of real estate, releases of mortgages,
24 powers of attorney to convey real estate, leases which have
25 been acknowledged or proved, and abstracts of such

1 instruments which have been acknowledged or proved;
2 (2)(b) notices of buyer's interest in real property,
3 notwithstanding any other requirement of law or rule
4 relating to eligibility for recording of the deed, contract
5 for deed, or other document relating to the notice of
6 buyer's interest; however, if the instrument of conveyance
7 underlying a notice of buyer's interest would be
8 unrecordable, the clerk and recorder shall notify the buyer
9 by certified mail that the underlying instrument is
10 unrecordable and may be void;

11 (3)(c) a document on a form provided by the department
12 of revenue certifying that the holder of a nonprobate
13 interest in real property is deceased and that his interest
14 is terminated. A nonprobate interest in real property is a
15 joint tenancy interest, a life estate interest, or any other
16 interest not requiring probate. The document may be on the
17 form used by the department of revenue for responding to the
18 application for determination of inheritance or estate tax.
19 It shall contain:

20 (a)(i) a statement that the holder of the nonprobate
21 interest has died and that his interest in the property is
22 terminated;

23 (b)(ii) a certification by the county treasurer that
24 the inheritance or estate tax, if any tax was due, has been
25 paid or that no inheritance or estate tax was due;

1 ~~(c)~~(iii) a description of the property;
 2 ~~(4)~~(d) certificates of births and deaths;
 3 ~~(5)~~(e) wills devising real estate admitted to probate;
 4 ~~(6)~~(f) official bonds;
 5 ~~(7)~~(g) transcripts of judgments which by law are made
 6 liens upon real estate;
 7 ~~(8)~~(h) instruments describing or relating to the
 8 individual property of married persons;
 9 ~~(9)~~(i) all orders and decrees made by the district
 10 court in probate matters affecting real estate and which are
 11 required to be recorded;
 12 ~~(10)~~(j) notice of preemption claims;
 13 ~~(11)~~(k) notice and declaration of water rights;
 14 ~~(12)~~(l) assignments for the benefit of creditors;
 15 ~~(13)~~(m) affidavits of annual work done on mining
 16 claims;
 17 ~~(14)~~(n) notices of mining locations and declaratory
 18 statements;
 19 ~~(15)~~(o) estrays and lost property;
 20 ~~(16)~~(p) a book containing appraisalment of state lands;
 21 ~~(17)~~(q) such other writings as are required or
 22 permitted by law to be recorded.
 23 (2) (a) A facsimile copy of a document subject to
 24 recording under subsection (1) may be recorded as an
 25 original for purposes of subsection (1) provided that the

1 original document is recorded within 5 working days of
 2 recording of the facsimile copy. If all other requirements
 3 are met, the date of recording of the original document
 4 relates back to the date of recording of the facsimile copy.
 5 A facsimile copy may be recorded under subsection (1) if it:
 6 (i) is produced by a method of transmission of images
 7 in which the image is scanned at the transmitter,
 8 reconstructed at the receiving station, and duplicated on
 9 paper at the receiving station; and
 10 (ii) is legible and the same size as the original.
 11 (b) During the 5-day period referred to in subsection
 12 (2)(a), the recorded facsimile copy constitutes constructive
 13 notice for all purposes of the original document."

14 **Section 2.** Section 72-16-503, MCA, is amended to read:
 15 "72-16-503. Additional filings required when real
 16 property involved and no representative -- release of lien.
 17 (1) If an interest in real property is involved under
 18 72-16-502, the applicant shall record with the clerk and
 19 recorder of each county in which the real property or any
 20 part thereof is located a document containing those matters
 21 required by 7-4-2613(3)(1)(c).
 22 (2) The recording of the documents under subsection
 23 (1) constitutes release of any lien for inheritance taxes."

-End-

APPROVED BY COMM.
ON LOCAL GOVERNMENT

HOUSE BILL NO. 105
INTRODUCED BY ELLISON

A BILL FOR AN ACT ENTITLED: "AN ACT TO ALLOW FACSIMILE COPIES OF CERTAIN DOCUMENTS TO BE RECORDED WITH THE COUNTY CLERK AND RECORDER PENDING RECORDING WITHIN 5 DAYS OF THE ORIGINAL DOCUMENT; TO MAKE A PERSON WHO FILES A FALSE DOCUMENT BY FACSIMILE LIABLE FOR ANY DAMAGES OCCASIONED THEREBY; AND AMENDING SECTIONS 7-4-2613, 7-4-2623, AND 72-16-503, MCA."

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

Section 1. Section 7-4-2613, MCA, is amended to read:

"7-4-2613. Documents subject to recording -- filing of facsimile copies -- standards. (1) The county clerk must, upon payment of his fees for the same, record, photograph, or correctly copy, separately, in large and well-bound or to be bound separate books, either in a fair hand or by printing, typewriting, or photographic process or by the use of prepared blank forms:

{1}{a} deeds, grants, transfers, certified copies of final judgments or decrees partitioning or affecting the title or possession of real property any part of which is situated in the county, contracts to sell or convey real estate and mortgages of real estate, releases of mortgages,

powers of attorney to convey real estate, leases which have been acknowledged or proved, and abstracts of such instruments which have been acknowledged or proved;

{2}{b} notices of buyer's interest in real property, notwithstanding any other requirement of law or rule relating to eligibility for recording of the deed, contract for deed, or other document relating to the notice of buyer's interest; however, if the instrument of conveyance underlying a notice of buyer's interest would be unrecordable, the clerk and recorder shall notify the buyer by certified mail that the underlying instrument is unrecordable and may be void;

{3}{c} a document on a form provided by the department of revenue certifying that the holder of a nonprobate interest in real property is deceased and that his interest is terminated. A nonprobate interest in real property is a joint tenancy interest, a life estate interest, or any other interest not requiring probate. The document may be on the form used by the department of revenue for responding to the application for determination of inheritance or estate tax. It shall contain:

{a}{i} a statement that the holder of the nonprobate interest has died and that his interest in the property is terminated;

{b}{ii} a certification by the county treasurer that

1 the inheritance or estate tax, if any tax was due, has been
 2 paid or that no inheritance or estate tax was due;
 3 (c)(iii) a description of the property;
 4 (4)(d) certificates of births and deaths;
 5 (5)(e) wills devising real estate admitted to probate;
 6 (6)(f) official bonds;
 7 (7)(g) transcripts of judgments which by law are made
 8 liens upon real estate;
 9 (8)(h) instruments describing or relating to the
 10 individual property of married persons;
 11 (9)(i) all orders and decrees made by the district
 12 court in probate matters affecting real estate and which are
 13 required to be recorded;
 14 (10)(j) notice of preemption claims;
 15 (11)(k) notice and declaration of water rights;
 16 (12)(l) assignments for the benefit of creditors;
 17 (13)(m) affidavits of annual work done on mining
 18 claims;
 19 (14)(n) notices of mining locations and declaratory
 20 statements;
 21 (15)(o) estrays and lost property;
 22 (16)(p) a book containing appraisal of state lands;
 23 (17)(q) such other writings as are required or
 24 permitted by law to be recorded.
 25 (2) (a) A facsimile copy of a document subject to

1 recording under subsection (1), EXCEPT A DOCUMENT THAT
 2 OPERATES TO TRANSFER TITLE TO REALTY, may be recorded as an
 3 original for purposes of subsection (1) provided that the
 4 original document is recorded within 5 working days of
 5 recording of the facsimile copy. If all other requirements
 6 are met, the date of recording of the original document
 7 relates back to the date of recording of the facsimile copy.
 8 A facsimile copy may be recorded under subsection (1) if it:
 9 (i) is produced by a method of transmission of images
 10 in which the image is scanned at the transmitter,
 11 reconstructed at the receiving station, and duplicated on
 12 paper at the receiving station; and
 13 (ii) is legible and the same size as the original.
 14 (b) During the 5-day period referred to in subsection
 15 (2)(a), the recorded facsimile copy constitutes constructive
 16 notice for all purposes of the original document.
 17 (C) IF THE ORIGINAL DOCUMENT OF WHICH A COPY WAS
 18 RECORDED UNDER SUBSECTION (2)(A) IS NOT RECORDED WITHIN 5
 19 WORKING DAYS OF RECORDING OF THE FACSIMILE COPY, THE
 20 RECORDING OF THE FACSIMILE COPY IS VOID AND OF NO EFFECT."
 21 **SECTION 2. SECTION 7-4-2623, MCA, IS AMENDED TO READ:**
 22 **"7-4-2623. Liability of clerk relating to duties as**
 23 **recorder -- liability for filing false document by**
 24 **facsimile. (1) A county clerk is liable to the party**
 25 **aggrieved for three times the amount of the damages which**

1 may be occasioned thereby and is punishable as provided in
 2 this code if the county clerk, as ex officio recorder to
 3 whom an instrument, proved or acknowledged according to law,
 4 or any paper or notice which may be recorded by law is
 5 delivered for record:

6 †1†(a) neglects or refuses to record such instrument,
 7 paper, or notice within reasonable time after receiving the
 8 same;

9 †2†(b) records any instruments, papers, or notices
 10 untruly or in any other manner than as hereinbefore
 11 directed;

12 †3†(c) neglects or refuses to keep in his office such
 13 indexes as are required by this part or to make the proper
 14 entries therein;

15 †4†(d) neglects or refuses to make the searches and to
 16 give the certificates required by this part or if such
 17 searches or certificates are incomplete or defective when
 18 such incompleteness or defect is due to his direct
 19 responsibility particularly affecting the property in
 20 respect to which it is requested;

21 †5†(e) alters, changes, or obliterates any records
 22 deposited in his office or inserts any new matter therein.

23 (2) A county clerk is not liable under subsection (1)
 24 for damages that may be occasioned by the filing of a false
 25 document by facsimile under 7-4-2613(2) if the facsimile

1 document appears on its face to be valid and authentic. A
 2 person filing a false document is liable for the damages
 3 occasioned thereby as provided in subsection (1)."

4 **Section 3.** Section 72-16-503, MCA, is amended to read:

5 "72-16-503. Additional filings required when real
 6 property involved and no representative -- release of lien.
 7 (1) If an interest in real property is involved under
 8 72-16-502, the applicant shall record with the clerk and
 9 recorder of each county in which the real property or any
 10 part thereof is located a document containing those matters
 11 required by 7-4-2613†3†(1)(c).

12 (2) The recording of the documents under subsection
 13 (1) constitutes release of any lien for inheritance taxes."

-End-