

SENATE BILL NO. 406
INTRODUCED BY MCGEE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A CORNER RECORD MAY BE FILED IN LIEU OF A CERTIFICATE OF SURVEY IN CERTAIN INSTANCES; REQUIRING THAT THE COUNTY CLERK PROVIDE AN INDEX; PROVIDING THAT PARCELS CREATED FOR RIGHTS-OF-WAY, UTILITY SITES, OR OTHER NONRESIDENTIAL SITES THAT DO NOT REQUIRE WATER OR SEWER OR UTILITY SITES ARE EXEMPT FROM THE SUBDIVISION REVIEW PROCESS UNLESS THERE IS A SUBSEQUENT CHANGE IN LANDUSE; PROVIDING GUIDANCE ON EXEMPTIONS THAT ARE CREATED TO PROVIDE SECURITY FOR MORTGAGES, LIENS, OR TRUST INDENTURES; AND AMENDING SECTIONS 70-22-105, 70-22-109, 76-3-201, AND 76-3-404, MCA."

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

Section 1. Section 70-22-105, MCA, is amended to read:

"70-22-105. Filing permitted as to any corner or accessory. (1) A surveyor may file ~~such a~~ a corner record ~~as~~ to any property corner, property controlling corner, reference monument, or accessory to a corner.

(2) The filing of a properly completed corner record, documenting survey data used to determine the position of the corner, may be filed in lieu of filing a certificate of survey, as provided in 76-3-404, for the following listed corners:

- (a) a single, previously filed or recorded property corner;
- (b) a property controlling corner;
- (c) a reference monument; or
- (d) an accessory to a corner."

Section 2. Section 70-22-109, MCA, is amended to read:

"70-22-109. Duties of county clerk. (1) The county clerk and recorder of the county containing the corner ~~shall~~ must receive the completed corner record and preserve it in a hardbound book. The books ~~shall~~ must be numbered in numerical order as filled.

(2) The clerk shall number the forms in numerical order as they are filed.

(3) The book and page number in which the corner record is filed ~~shall~~ must be placed by the clerk near

that same corner on a cross-index plat for public land corners or on an index referenced to tract or lot number in a survey of record. ~~The~~ which the clerk shall provide an index for ~~such a~~ that purpose.

(4) The county clerk and recorder shall make these records available for public inspection during all usual office hours.

(5) There is no filing fee."

Section 3. Section 76-3-201, MCA, is amended to read:

"76-3-201. Exemption for certain divisions of land. (1) Unless the method of disposition is adopted for the purpose of evading this chapter, the requirements of this chapter may not apply to any division of land that:

(a) is created by order of any court of record in this state or by operation of law or that, in the absence of agreement between the parties to the sale, could be created by an order of any court in this state pursuant to the law of eminent domain, Title 70, chapter 30;

(b) subject to subsection (3), is created to provide security for ~~construction~~ mortgages, liens, or trust indentures for the purpose of construction, improvements to the land being divided, or refinancing purposes;

(c) creates an interest in oil, gas, minerals, or water that is severed from the surface ownership of real property;

(d) creates cemetery lots;

(e) is created by the reservation of a life estate;

(f) is created by lease or rental for farming and agricultural purposes; ~~or~~

(g) is in a location over which the state does not have jurisdiction; ~~or~~

(h) is created for rights-of-way, utility sites, or other nonresidential sites that do not require water or sewer OR UTILITY SITES. A SUBSEQUENT CHANGE IN THE USE OF THE LAND TO A RESIDENTIAL, COMMERCIAL, OR INDUSTRIAL USE IS SUBJECT TO THE REQUIREMENTS OF THIS CHAPTER.

(2) Before a court of record orders a division of land under subsection (1)(a), the court shall notify the governing body of the pending division and allow the governing body to present written comment on the division.

(3) An exemption under subsection (1)(b) applies:

(a) to a division of land of any size;

(b) ONLY if the land that is divided is not conveyed to any entity other than the financial or lending institution to which the mortgage, lien, or trust indenture was conveyed GIVEN OR TO A PURCHASER UPON FORECLOSURE OF THE MORTGAGE, LIEN, OR TRUST INDENTURE. A transfer of the divided land, by the owner of the property at the time that the land was divided, to any party other than those identified in this subsection (3)(b)

subjects the division of land to the requirements of this chapter.

(C) TO A PARCEL THAT IS CREATED TO PROVIDE SECURITY AS PROVIDED IN SUBSECTION (1)(B). THE REMAINDER OF THE TRACT OF LAND IS SUBJECT TO THE PROVISIONS OF THIS CHAPTER IF APPLICABLE."

Section 4. Section 76-3-404, MCA, is amended to read:

"76-3-404. Certificate of survey. (1) Except as provided in 70-22-105, within ~~Within~~ 180 days of the completion of a survey, the registered land surveyor responsible for the survey, whether ~~he~~ the surveyor is privately or publicly employed, shall prepare and submit for filing a certificate of survey in the county in which the survey was made if the survey:

- (a) provides material evidence not appearing on any map filed with the county clerk and recorder or contained in the records of the United States bureau of land management;
- (b) reveals a material discrepancy in ~~such~~ the map;
- (c) discloses evidence to suggest alternate locations of lines or points; or
- (d) establishes one or more lines not shown on a recorded map, the positions of which are not ascertainable from an inspection of ~~such~~ the map without trigonometric calculations.

(2) A certificate of survey ~~will~~ is not ~~be~~ required for any survey ~~which~~ that is made by the United States bureau of land management, ~~or which~~ that is preliminary, ~~or which~~ that will become part of a subdivision plat being prepared for recording under the provisions of this chapter.

(3) Certificates of survey ~~shall~~ must be legibly drawn, printed, or reproduced by a process guaranteeing a permanent record and ~~shall~~ must conform to monumentation and surveying requirements promulgated under this chapter."

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