

SENATE BILL NO. 319

INTRODUCED BY E. BOLDMAN, W. CURDY, S. O'BRIEN

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO TRACTS OF RECORD; PROVIDING THAT A CERTIFICATE OF SURVEY OR SUBDIVISION PLAT MAY SUPERSEDE A PRIOR SURVEY WHEN DETERMINING A TRACT OF RECORD; REVISING A DEFINITION; AMENDING SECTION 76-3-103, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

**Section 1.** Section 76-3-103, MCA, is amended to read:

**"76-3-103. Definitions.** As used in this chapter, unless the context or subject matter clearly requires otherwise, the following definitions apply:

- (1) "Certificate of survey" means a drawing of a field survey prepared by a registered surveyor for the purpose of disclosing facts pertaining to boundary locations.
- (2) "Cluster development" means a subdivision with lots clustered in a group of five or more lots that is designed to concentrate building sites on smaller lots in order to reduce capital and maintenance costs for infrastructure through the use of concentrated public services and utilities, while allowing other lands to remain undeveloped.
- (3) "Dedication" means the deliberate appropriation of land by an owner for any general and public use, reserving to the landowner no rights that are incompatible with the full exercise and enjoyment of the public use to which the property has been devoted.
- (4) "Division of land" means the segregation of one or more parcels of land from a larger tract held in single or undivided ownership by transferring or contracting to transfer title to a portion of the tract or properly filing a certificate of survey or subdivision plat establishing the identity of the segregated parcels pursuant to this chapter. The conveyance of a tract of record or an entire parcel of land that was created by a previous division of land is not a division of land.

1           (5)     "Examining land surveyor" means a registered land surveyor appointed by the governing body  
2 to review surveys and plats submitted for filing.

3           (6)     "Final plat" means the final drawing of the subdivision and dedication required by this chapter  
4 to be prepared for filing for record with the county clerk and recorder and containing all elements and  
5 requirements set forth in this chapter and in regulations adopted pursuant to this chapter.

6           (7)     "Governing body" means a board of county commissioners or the governing authority of a city  
7 or town organized pursuant to law.

8           (8)     "Immediate family" means a spouse, children by blood or adoption, and parents.

9           (9)     "Minor subdivision" means a subdivision that creates five or fewer lots from a tract of record.

10          (10)    "Phased development" means a subdivision application and preliminary plat that at the time of  
11 submission consists of independently platted development phases that are scheduled for review on a schedule  
12 proposed by the subdivider.

13          (11)    "Planned unit development" means a land development project consisting of residential  
14 clusters, industrial parks, shopping centers, or office building parks that compose a planned mixture of land  
15 uses built in a prearranged relationship to each other and having open space and community facilities in  
16 common ownership or use.

17          (12)    "Plat" means a graphical representation of a subdivision showing the division of land into lots,  
18 parcels, blocks, streets, alleys, and other divisions and dedications.

19          (13)    "Preliminary plat" means a neat and scaled drawing of a proposed subdivision showing the  
20 layout of streets, alleys, lots, blocks, and other elements of a subdivision that furnish a basis for review by a  
21 governing body.

22          (14)    "Public utility" has the meaning provided in 69-3-101, except that for the purposes of this  
23 chapter, the term includes county or consolidated city and county water or sewer districts as provided for in Title  
24 7, chapter 13, parts 22 and 23, and municipal sewer or water systems and municipal water supply systems  
25 established by the governing body of a municipality pursuant to Title 7, chapter 13, parts 42, 43, and 44.

26          (15)    "Subdivider" means a person who causes land to be subdivided or who proposes a subdivision  
27 of land.

28          (16)    "Subdivision" means a division of land or land so divided that it creates one or more parcels

1 containing less than 160 acres that cannot be described as a one-quarter aliquot part of a United States  
 2 government section, exclusive of public roadways, in order that the title to the parcels may be sold or otherwise  
 3 transferred and includes any resubdivision and a condominium. The term also means an area, regardless of its  
 4 size, that provides or will provide multiple spaces for rent or lease on which recreational camping vehicles or  
 5 mobile homes will be placed.

6 (17) (a) "Tract of record" means an individual parcel of land, irrespective of ownership, that can be  
 7 identified by legal description, independent of any other parcel of land, using documents on file in the records of  
 8 the county clerk and recorder's office.

9 (b) Each individual tract of record continues to be an individual parcel of land unless the owner of  
 10 the parcel has joined it with other contiguous parcels by filing with the county clerk and recorder:

11 (i) an instrument of conveyance in which the aggregated parcels have been assigned a legal  
 12 description that describes the resulting single parcel and in which the owner expressly declares the owner's  
 13 intention that the tracts be merged; or

14 (ii) a certificate of survey or subdivision plat ~~that shows that the boundaries of the original parcels~~  
 15 ~~have been expunged and depicts the boundaries of the larger aggregate parcel, except for a retracement~~  
 16 survey, for which the boundary lines shown and utilized on the certificate of survey or subdivision plat must be  
 17 considered to automatically supersede and replace any prior boundary lines running beneath the area surveyed  
 18 or platted for as long as the survey or plat remains in effect.

19 (c) An instrument of conveyance does not merge parcels of land under subsection (17)(b)(i) unless  
 20 the instrument states, "This instrument is intended to merge individual parcels of land to form the aggregate  
 21 parcel(s) described in this instrument" or a similar statement, in addition to the legal description of the  
 22 aggregate parcels, clearly expressing the owner's intent to effect a merger of parcels."  
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24 **NEW SECTION. Section 2. Effective date.** [This act] is effective on passage and approval.

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 26 **NEW SECTION. Section 3. Retroactive applicability.** [This act] applies retroactively, within the  
 27 meaning of 1-2-109, to tracts of record filed before [the effective date of this act].

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