

SUBDIVISION OF LAND AMENDMENTS

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Joseph G. Murray

AN ACT RELATING TO THE MUNICIPAL CODE AND COUNTIES; AMENDING AND CLARIFYING PROVISIONS RELATING TO THE SUBDIVIDING OF LAND; CLARIFYING AGRICULTURAL EXEMPTIONS; REQUIRING NOTICE TO BUYER OF UNBUILDABLE PROPERTY; PROVIDING DEFINITIONS; AND MAKING TECHNICAL CHANGES.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

- 3-1-20, as last amended by Chapter 202, Laws of Utah 1994
- 10-1-104, as last amended by Chapter 389, Laws of Utah 1997
- 10-9-103, as last amended by Chapter 291, Laws of Utah 1999
- 10-9-804, as last amended by Chapter 13, Laws of Utah 1998
- 10-9-805, as last amended by Chapter 142, Laws of Utah 1997
- 10-9-806, as last amended by Chapter 179, Laws of Utah 1995
- 10-9-807, as enacted by Chapter 235, Laws of Utah 1991
- 10-9-808, as last amended by Chapter 176, Laws of Utah 1999
- 10-9-811, as last amended by Chapter 180, Laws of Utah 1995
- 17-27-103, as last amended by Chapters 139 and 291, Laws of Utah 1999
- 17-27-804, as last amended by Chapter 13, Laws of Utah 1998
- 17-27-805, as last amended by Chapter 142, Laws of Utah 1997
- 17-27-806, as last amended by Chapter 179, Laws of Utah 1995
- 17-27-807, as enacted by Chapter 235, Laws of Utah 1991
- 17-27-808, as last amended by Chapter 176, Laws of Utah 1999
- 17-27-811, as last amended by Chapter 142, Laws of Utah 1997
- 30-3-5, as last amended by Chapters 168 and 277, Laws of Utah 1999

28 ENACTS:

29 **57-1-45**, Utah Code Annotated 1953

30 **75-3-917**, Utah Code Annotated 1953

31 *Be it enacted by the Legislature of the state of Utah:*

32 Section 1. Section **3-1-20** is amended to read:

33 **3-1-20. Voluntary dissolution -- Distribution of assets -- Proceedings.**

34 (1) (a) An association may be dissolved:

35 (i) at a regular meeting, or a special meeting called for that purpose;

36 (ii) after 30 days advance notice of the time, place, and object of the meeting is served on
37 the members of the association as prescribed in the bylaws; and

38 (iii) by a two-thirds vote of the members voting.

39 (b) (i) The members shall elect a committee of three members to act as trustees on behalf
40 of the association, and the trustees shall liquidate and distribute the association's assets within the
41 time fixed by the members.

42 (ii) The trustees may bring and defend actions necessary to protect and enforce the rights
43 of the association.

44 (iii) Any vacancies in the trusteeship may be filled by the remaining trustees.

45 (2) (a) If an association dissolves pursuant to this section, the trustees, a creditor, a
46 member, or the attorney general may bring an action in the district court in the county where the
47 principal place of business of the association is located.

48 (b) The court may specify:

49 (i) appropriate notice of the time and place for the submission of claims against the
50 association, which notice may require creditors of and claimants against the association to submit
51 accounts and demands in writing at the specified place by a specific day, which date shall be at
52 least 40 days from the date of service or first publication of the notice;

53 (ii) the payment or satisfaction of claims and demands against the association, or the
54 retention of money for such purpose;

55 (iii) the administration of trusts or the disposition of the property held in trust by or for the
56 association;

57 (iv) the sale and disposition of any remaining property of the association and the
58 distribution or division of the property or its proceeds among the members or persons entitled to

59 them; and

60 (v) other matters related to the dissolution.

61 (c) All orders and judgments shall be binding upon the association, its property and assets,
62 trustees, members, creditors, and all claimants against it.

63 (3) On dissolution, the assets of the association shall be distributed in the following
64 manner and order:

65 (a) to pay the association's debts and expenses;

66 (b) to return to any investors the par value of their capital;

67 (c) to pay patrons on a pro rata basis the amount of any patronage capital credited to their
68 accounts; and

69 (d) if there is a surplus, to distribute it among those patrons who have been members of
70 the association at any time during the last five years preceding dissolution or for a longer period
71 of time if determined by the board of directors to be practicable, on the basis of patronage during
72 that period.

73 (4) After the final settlement by the trustees, the association shall be considered dissolved
74 and shall cease to exist.

75 (5) The trustees shall make a report in duplicate of the proceedings held under this section,
76 which shall be signed, acknowledged, and filed as required for the filing of the articles of
77 incorporation.

78 (6) This section shall apply to all associations incorporated in this state.

79 (7) Each person who prepares a document that conveys title to real property shall comply
80 with Section 57-1-45.

81 Section 2. Section **10-1-104** is amended to read:

82 **10-1-104. Definitions.**

83 As used in this title:

84 (1) "City" includes a city of the first class, a city of the second class, and a city of the third
85 class, as classified in Section 10-2-301.

86 (2) "Contiguous" means:

87 (a) if used to described an area, continuous, uninterrupted, and without an island of
88 territory not included as part of the area; and

89 (b) if used to describe an area's relationship to another area, sharing a common boundary.

90 (3) "Governing body" means collectively the legislative body and the executive of any
91 municipality. Unless otherwise provided:

92 (a) in a city of the first or second class, the governing body is the city commission;

93 (b) in a city of the third class, the governing body is the city council; and

94 (c) in a town, the governing body is the town council.

95 (4) "Municipal" means of or relating to a municipality.

96 (5) "Municipality" means a city of the first class, city of the second class, city of the third
97 class, or a town, as classified in Section 10-2-301.

98 (6) "Peninsula," when used to describe an unincorporated area, means an area surrounded
99 on more than 1/2 of its boundary distance, but not completely, by incorporated territory and
100 situated so that the length of a line drawn across the unincorporated area from an incorporated area
101 to an incorporated area on the opposite side shall be less than 25% of the total aggregate
102 boundaries of the unincorporated area.

103 (7) "Person" means an individual, corporation, partnership, organization, association,
104 trust, governmental agency, or any other legal entity.

105 [(7)] (8) "Provisions of law" shall include other statutes of the state of Utah and
106 ordinances, rules, and regulations properly adopted by any municipality unless the construction is
107 clearly contrary to the intent of state law.

108 [(8)] (9) "Recorder," unless clearly inapplicable, includes and applies to a town clerk.

109 [(9)] (10) "Town" means a town as classified in Section 10-2-301.

110 [(10)] (11) "Unincorporated" means not within a municipality.

111 Section 3. Section **10-9-103** is amended to read:

112 **10-9-103. Definitions -- Notice.**

113 (1) As used in this chapter:

114 (a) "Billboard" means a freestanding ground sign located on industrial, commercial, or
115 residential property if the sign is designed or intended to direct attention to a business, product, or
116 service that is not sold, offered, or existing on the property where the sign is located.

117 (b) "Chief executive officer" means:

118 (i) the mayor in municipalities operating under all forms of municipal government except
119 the council-manager form; or

120 (ii) the city manager in municipalities operating under the council-manager form of

121 municipal government.

122 (c) "Conditional use" means a land use that, because of its unique characteristics or
123 potential impact on the municipality, surrounding neighbors, or adjacent land uses, may not be
124 compatible in some areas or may be compatible only if certain conditions are required that mitigate
125 or eliminate the detrimental impacts.

126 (d) "Constitutional taking" has the meaning as defined in Section 63-34-13.

127 (e) "County" means the unincorporated area of the county.

128 (f) "Elderly person" means a person who is 60 years old or older, who desires or needs to
129 live with other elderly persons in a group setting, but who is capable of living independently.

130 (g) (i) "General plan" means a document that a municipality adopts that sets forth general
131 guidelines for proposed future development of the land within the municipality, as set forth in
132 Sections 10-9-301 and 10-9-302.

133 (ii) "General plan" includes what is also commonly referred to as a "master plan."

134 (h) "Legislative body" means the city council or city commission.

135 (i) "Lot line adjustment" in a subdivision means the relocation of the property boundary
136 line between two adjoining lots with the consent of the owners of record.

137 (j) "Municipality" means a city or town.

138 (k) "Nonconforming structure" means a structure that:

139 (i) legally existed before its current zoning designation; and

140 (ii) because of subsequent zoning changes, does not conform with the zoning regulation's
141 setback, height restrictions, or other regulations that govern the structure.

142 (l) "Nonconforming use" means a use of land that:

143 (i) legally existed before its current zoning designation;

144 (ii) has been maintained continuously since the time the zoning regulation governing the
145 land changed; and

146 (iii) because of subsequent zoning changes, does not conform with the zoning regulations
147 that now govern the land.

148 (m) "Official map" means a map of proposed streets that has the legal effect of prohibiting
149 development of the property until the municipality develops the proposed street.

150 (n) "Plat" means a map or other graphical representation of lands being laid out and
151 prepared in accordance with Section 10-9-804.

152 (o) "Record of survey map" means a map of a survey of land prepared in accordance with
153 Section 17-23-17.

154 [~~(n)~~] (p) (i) "Residential facility for elderly persons" means a single-family or
155 multiple-family dwelling unit that meets the requirements of Part 5 and any ordinance adopted
156 under authority of that part.

157 (ii) "Residential facility for elderly persons" does not include a health care facility as
158 defined by Section 26-21-2.

159 [~~(o)~~] (q) "Special district" means all entities established under the authority of Title 17A,
160 Special Districts, and any other governmental or quasi-governmental entity that is not a county,
161 municipality, school district, or unit of the state.

162 [~~(p)~~] (r) "Street" means public rights-of-way, including highways, avenues, boulevards,
163 parkways, roads, lanes, walks, alleys, viaducts, subways, tunnels, bridges, public easements, and
164 other ways.

165 [~~(q)~~] (s) (i) "Subdivision" means any land that is divided, resubdivided or proposed to be
166 divided into two or more lots, parcels, sites, units, plots, or other division of land for the purpose,
167 whether immediate or future, for offer, sale, lease, or development either on the installment plan
168 or upon any and all other plans, terms, and conditions.

169 (ii) "Subdivision" includes:

170 (A) the division or development of land whether by deed, metes and bounds description,
171 devise and testacy, lease, map, plat, or other recorded instrument; and

172 (B) except as provided in Subsection (1)[~~(q)~~] (s)(iii), divisions of land for all residential
173 and nonresidential uses, including land used or to be used for commercial, agricultural, and
174 industrial purposes.

175 (iii) "Subdivision" does not include:

176 (A) a bona fide division or partition of agricultural land for the purpose of joining one of
177 the resulting separate parcels to a contiguous parcel of unsubdivided agricultural land, if neither
178 the resulting combined parcel nor the parcel remaining from the division or partition violates an
179 applicable zoning ordinance;

180 (B) a recorded agreement between owners of adjoining properties adjusting their mutual
181 boundary if:

182 (I) no new lot is created; and

183 (II) the adjustment does not result in a violation of applicable zoning ordinances; or

184 (C) a recorded document, executed by the owner of record, revising the legal description
185 of more than one contiguous parcel of property into one legal description encompassing all such
186 parcels of property.

187 (iv) The joining of a subdivided parcel of property to another parcel of property that has
188 not been subdivided does not constitute a "subdivision" under this Subsection (1)[(τ)] (s) as to the
189 unsubdivided parcel of property or subject the unsubdivided parcel to the municipality's
190 subdivision ordinance.

191 [(τ)] (t) "Unincorporated" means the area outside of the incorporated boundaries of cities
192 and towns.

193 (2) (a) A municipality meets the requirements of reasonable notice required by this chapter
194 if it:

195 (i) posts notice of the hearing or meeting in at least three public places within the
196 jurisdiction and publishes notice of the hearing or meeting in a newspaper of general circulation
197 in the jurisdiction, if one is available; or

198 (ii) gives actual notice of the hearing or meeting.

199 (b) A municipal legislative body may enact an ordinance establishing stricter notice
200 requirements than those required by this Subsection (2).

201 (c) (i) Proof that one of the two forms of notice authorized by this Subsection (2) was
202 given is prima facie evidence that notice was properly given.

203 (ii) If notice given under authority of this section is not challenged as provided in Section
204 10-9-1001 within 30 days from the date of the meeting for which the notice was given, the notice
205 is considered adequate and proper.

206 Section 4. Section **10-9-804** is amended to read:

207 **10-9-804. Plats required.**

208 (1) Unless exempt under Section 10-9-806 or not included in the definition of subdivision
209 under Subsection 10-9-103(1), whenever any lands are laid out and platted, the owner of those
210 lands shall provide an accurate [map-or] plat that describes or specifies:

211 (a) the boundaries, course, and dimensions of the parcels of ground;

212 (b) whether the parcels of ground are intended to be used as streets or for other public uses,
213 and whether any areas are reserved for public purposes;

214 (c) the ~~[number, temporary]~~ lot or unit reference, the block or building reference, the street
215 or site address, the street name or coordinate address, the acreage or square footage for all parcels,
216 units, or lots, and the length and width of the blocks and lots intended for sale; and

217 (d) existing right-of-way and easement grants of record for underground facilities, as
218 defined in Section 54-8a-2, and for other utility facilities.

219 (2) (a) The owner of the land shall acknowledge the ~~[map or]~~ plat before an officer
220 authorized by law to take the acknowledgement of conveyances of real estate.

221 (b) The surveyor making the ~~[map or]~~ plat shall certify it.

222 (c) The owner or operator of the underground and utility facilities shall approve the ~~[map~~
223 ~~or]~~ plat of its property interest if it specifies:

224 (i) the boundary, course, dimensions, and intended use of the right-of-way and easement
225 grants of record;

226 (ii) the location of existing underground and utility facilities; and

227 (iii) any conditions or restrictions governing the location of the facilities within the
228 right-of-way, and easement grants of records, and utility facilities within the subdivision.

229 (d) The legislative body shall approve the ~~[map or]~~ plat as provided in this part. Before
230 the legislative body may approve a ~~[map or]~~ plat, the owner of the land shall provide the legislative
231 body with a tax clearance indicating that all taxes, interest, and penalties owing on the land have
232 been paid.

233 (3) After the ~~[map or]~~ plat has been acknowledged, certified, and approved, the owner of
234 the land shall file and record it in the county recorder's office in the county in which the lands
235 platted and laid out are situated.

236 Section 5. Section **10-9-805** is amended to read:

237 **10-9-805. Subdivision approval procedure.**

238 (1) A person may not submit a plat of a subdivision to the county recorder's office for
239 ~~[filing or]~~ recording unless a recommendation has been received from the planning commission
240 and:

241 (a) the plat has been approved by:

242 (i) the municipality's legislative body; or

243 (ii) other officers that the municipal legislative body designates in an ordinance; and

244 (b) the approvals are entered in writing on the plat by the mayor or chairperson of the

245 legislative body or by the other officers designated in the ordinance.

246 (2) In municipalities under the council-mayor form of government, Section 10-3-1219.5
247 governs.

248 Section 6. Section **10-9-806** is amended to read:

249 **10-9-806. Exemptions from plat requirement.**

250 (1) ~~[In subdivisions of less than ten lots, land may be sold]~~ Notwithstanding Section
251 10-9-804 or 10-9-805, a person may submit to the county recorder's office for recording a
252 document that subdivides property by metes and bounds into less than ten lots, without the
253 necessity of recording a plat, if:

254 (a) ~~[a recommendation has been received from]~~ the planning commission, if required by
255 municipal ordinance, has given the municipal legislative body its recommendation, whether
256 favorable or not;

257 (b) ~~the [deed contains a stamp or other mark indicating that the subdivision has been~~
258 approved by] document contains a certificate or written approval from:

259 (i) the municipality's legislative body; or

260 (ii) other officers that the municipal legislative body designates in an ordinance;

261 (c) the subdivision is not traversed by the mapped lines of a proposed street as shown in
262 the general plan and does not require the dedication of any land for street or other public purposes;
263 and

264 (d) if the subdivision is located in a zoned area, each lot in the subdivision meets the
265 frontage, width, and area requirements of the zoning ordinance or has been granted a variance from
266 those requirements by the board of adjustment.

267 (2) Municipalities under the council-mayor form of government shall comply with Section
268 10-3-1219.5.

269 (3) (a) Subject to Subsection (3)(b), a lot or parcel resulting from a division of agricultural
270 land is exempt from the plat requirements of Section 10-9-804 if the lot or parcel:

271 (i) qualifies as land in agricultural use under Title 59, Chapter 2, Part 5, Farmland
272 Assessment Act;

273 (ii) meets the minimum size requirement of applicable zoning ordinances; and

274 (iii) is not used and will not be used for any nonagricultural purpose.

275 (b) The boundaries of each lot or parcel exempted under Subsection (3)(a) shall be

276 graphically illustrated on a record of survey map that, after receiving the same approvals as are
277 required for a plat under Section 10-9-805, shall be recorded with the county recorder.

278 (c) If a lot or parcel exempted under Subsection (3)(a) is used for a nonagricultural
279 purpose, a municipality may require the lot or parcel to comply with the requirements of Section
280 10-9-804.

281 Section 7. Section **10-9-807** is amended to read:

282 **10-9-807. Dedication of streets.**

283 (1) [~~Maps and plats~~] Plats, when made, acknowledged, [~~filed,~~] and recorded according to
284 the procedures specified in this part, operate as a dedication of all streets and other public places,
285 and vest the fee of those parcels of land in the municipality for the public for the uses named or
286 intended in those [~~maps or~~] plats.

287 (2) The dedication established by this section does not impose liability upon the
288 municipality for streets and other public places that are dedicated in this manner but unimproved.

289 Section 8. Section **10-9-808** is amended to read:

290 **10-9-808. Vacating or changing a subdivision plat.**

291 (1) (a) Subject to Subsection (2), the legislative body of a municipality or any other officer
292 that the legislative body designates by ordinance may, with or without a petition, consider any
293 proposed vacation, alteration, or amendment of a subdivision plat, any portion of a subdivision
294 plat, or any street, lot, or alley contained in a subdivision plat at a public hearing.

295 (b) If a petition is filed, the responsible body or officer shall hold the public hearing within
296 45 days after receipt of the planning commission's recommendation under Subsection (2) if:

297 (i) the plat change includes the vacation of a public street or alley;

298 (ii) any owner within the plat notifies the municipality of their objection in writing within
299 ten days of mailed notification; or

300 (iii) a public hearing is required because all of the owners in the subdivision have not
301 signed the revised plat.

302 (2) (a) Before the legislative body or officer designated by the legislative body may
303 consider a proposed vacation, alteration, or amendment under Subsection (1)(a) or (6), the
304 legislative body or officer shall refer the proposal to the planning commission for its
305 recommendation.

306 (b) The planning commission shall give its recommendation within 30 days after the

307 proposed vacation, alteration, or amendment is referred to it.

308 (3) Any fee owner, as shown on the last county assessment rolls, of land within the
309 subdivision that has been laid out and platted as provided in this part may, in writing, petition the
310 legislative body to have the plat, any portion of it, or any street or lot contained in it, vacated,
311 altered, or amended as provided in this section.

312 (4) Each petition to vacate, alter, or amend an entire plat, a portion of a plat, or a street or
313 lot contained in a plat shall include:

314 (a) the name and address of all owners of record of the land contained in the entire plat;

315 (b) the name and address of all owners of record of land adjacent to any street that is
316 proposed to be vacated, altered, or amended; and

317 (c) the signature of each of these owners who consents to the petition.

318 (5) (a) A petition that lacks the consent of all owners referred to in Subsection (4) may not
319 be scheduled for consideration at a public hearing before the legislative body until the notice
320 required by this part is given.

321 (b) The petitioner shall pay the cost of the notice.

322 (6) Subject to Subsection (2), if the responsible body or officer proposes to vacate, alter,
323 or amend a subdivision plat, or any street or lot contained in a subdivision plat, they shall consider
324 the issue at a public hearing after giving the notice required by this part.

325 (7) Petitions to adjust lot lines between adjacent properties may be executed upon the
326 recordation of an appropriate deed if:

327 (a) no new dwelling lot or housing unit results from the lot line adjustment;

328 (b) the adjoining property owners consent to the lot line adjustment;

329 (c) the lot line adjustment does not result in remnant land that did not previously exist; and

330 (d) the adjustment does not result in violation of applicable zoning requirements.

331 (8) (a) The name of a recorded subdivision may be changed by recording an amended plat
332 making that change, as provided in this section.

333 (b) Except as provided in Subsection (8)(a), the recording of a declaration or other
334 document that purports to change the name of a recorded plat is void.

335 [(8)] (9) Municipalities operating under the council-mayor form of government shall
336 comply with Section 10-3-1219.5.

337 Section 9. Section **10-9-811** is amended to read:

338 **10-9-811. Prohibited acts.**

339 (1) (a) A county recorder may not record a subdivision plat [~~of a subdivision without the~~
340 ~~approval of]~~ that has not been approved by the [~~governing]~~ municipal legislative body.

341 (b) A plat of a subdivision recorded without the approval of the [~~governing]~~ municipal
342 legislative body required by this part is void.

343 (2) (a) An owner or agent of the owner of any land located in a subdivision, as defined in
344 this chapter, who transfers or sells any land in that subdivision [~~must disclose to the transferee or~~
345 ~~purchaser the location, width, and restrictions of a right-of-way and easement of record within the~~
346 ~~subdivision, or before a plan or plat of the subdivision has been approved and recorded]~~ before a
347 plat of the subdivision has been approved and recorded is guilty of a violation of this part for each
348 lot or parcel transferred or sold.

349 (b) The description by metes and bounds in the instrument of transfer or other documents
350 used in the process of selling or transferring does not exempt the transaction from being a violation
351 of Subsection (2)(a) or from the penalties or remedies provided in this chapter.

352 (3) (a) An owner may not submit or cause to be submitted to the county recorder's office
353 for recording a document that is contrary to the provisions of this part or an ordinance enacted
354 under the authority of this part.

355 (b) The recording of a document does not alone create a right to develop the property.

356 (c) Each development of property shall conform to the provisions of this part and any
357 ordinance enacted under the authority of this part.

358 (d) (i) A municipality may bring an action against an owner to require the property to
359 conform to the provisions of this part or an ordinance enacted under the authority of this part.

360 (ii) An action under this Subsection (3)(d) may include an injunction, abatement, merger
361 of title, or any other appropriate action or proceedings to prevent, enjoin, or abate the violation.

362 (iii) A municipality need only establish the violation to obtain the injunction.

363 Section 10. Section **17-27-103** is amended to read:

364 **17-27-103. Definitions -- Notice.**

365 (1) As used in this chapter:

366 (a) "Billboard" means a freestanding ground sign located on industrial, commercial, or
367 residential property if the sign is designed or intended to direct attention to a business, product, or
368 service that is not sold, offered, or existing on the property where the sign is located.

369 (b) "Chief executive officer" means the county executive, or if the county has adopted an
370 alternative form of government, the official who exercises the executive powers.

371 (c) "Conditional use" means a land use that, because of its unique characteristics or
372 potential impact on the county, surrounding neighbors, or adjacent land uses, may not be
373 compatible in some areas or may be compatible only if certain conditions are required that mitigate
374 or eliminate the detrimental impacts.

375 (d) "Constitutional taking" has the meaning as defined in Section 63-34-13.

376 (e) "County" means the unincorporated area of the county.

377 (f) "Elderly person" means a person who is 60 years old or older, who desires or needs to
378 live with other elderly persons in a group setting, but who is capable of living independently.

379 (g) "Gas corporation" has the same meaning as defined in Section 54-2-1.

380 (h) (i) "General plan" means a document that a county adopts that sets forth general
381 guidelines for proposed future development of the land within the county, as set forth in Sections
382 17-27-301 and 17-27-302.

383 (ii) "General plan" includes what is also commonly referred to as a "master plan."

384 (i) "Interstate pipeline company" means a person or entity engaged in natural gas
385 transportation subject to the jurisdiction of the Federal Energy Regulatory Commission under the
386 Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

387 (j) "Intrastate pipeline company" means a person or entity engaged in natural gas
388 transportation that is not subject to the jurisdiction of the Federal Energy Regulatory Commission
389 under the Natural Gas Act, 15 U.S.C. Sec. 717 et seq.

390 (k) "Legislative body" means the county legislative body, or for a county that has adopted
391 an alternative form of government, the body exercising legislative powers.

392 (l) "Lot line adjustment" means the relocation of the property boundary line between two
393 adjoining lots with the consent of the owners of record.

394 (m) "Municipality" means a city or town.

395 (n) "Nonconforming structure" means a structure that:

396 (i) legally existed before its current zoning designation; and

397 (ii) because of subsequent zoning changes, does not conform with the zoning regulation's
398 setback, height restrictions, or other regulations that govern the structure.

399 (o) "Nonconforming use" means a use of land that:

400 (i) legally existed before its current zoning designation;
401 (ii) has been maintained continuously since the time the zoning regulation governing the
402 land changed; and

403 (iii) because of subsequent zoning changes, does not conform with the zoning regulations
404 that now govern the land.

405 (p) "Official map" means a map of proposed streets that has the legal effect of prohibiting
406 development of the property until the county develops the proposed street.

407 (q) "Person" means an individual, corporation, partnership, organization, association, trust,
408 governmental agency, or any other legal entity.

409 (r) "Plat" means a map or other graphical representation of lands being laid out and
410 prepared in accordance with Section 17-27-804.

411 (s) "Record of survey map" means a map of a survey of land prepared in accordance with
412 Section 17-23-17.

413 [(q)] (t) (i) "Residential facility for elderly persons" means a single-family or
414 multiple-family dwelling unit that meets the requirements of Part 5 and any ordinance adopted
415 under authority of that part.

416 (ii) "Residential facility for elderly persons" does not include a health care facility as
417 defined by Section 26-21-2.

418 [(r)] (u) "Special district" means all entities established under the authority of Title 17A,
419 Special Districts, and any other governmental or quasi-governmental entity that is not a county,
420 municipality, school district, or unit of the state.

421 [(s)] (v) "Street" means public rights-of-way, including highways, avenues, boulevards,
422 parkways, roads, lanes, walks, alleys, viaducts, subways, tunnels, bridges, public easements, and
423 other ways.

424 [(t)] (w) (i) "Subdivision" means any land that is divided, resubdivided or proposed to be
425 divided into two or more lots, parcels, sites, units, plots, or other division of land for the purpose,
426 whether immediate or future, for offer, sale, lease, or development either on the installment plan
427 or upon any and all other plans, terms, and conditions.

428 (ii) "Subdivision" includes the division or development of land whether by deed, metes
429 and bounds description, devise and testacy, lease, map, plat, or other recorded instrument.

430 (iii) "Subdivision" does not include:

431 (A) a bona fide division or partition of agricultural land for agricultural purposes;

432 (B) a recorded agreement between owners of adjoining properties adjusting their mutual
433 boundary if:

434 (I) no new lot is created; and

435 (II) the adjustment does not result in a violation of applicable zoning ordinances;

436 (C) a recorded document, executed by the owner of record, revising the legal description
437 of more than one contiguous parcel of property into one legal description encompassing all such
438 parcels of property; or

439 (D) a bona fide division or partition of land in a county other than a first class county for
440 the purpose of siting, on one or more of the resulting separate parcels, an unmanned facility
441 appurtenant to a pipeline owned or operated by a gas corporation, interstate pipeline company, or
442 intrastate pipeline company.

443 (iv) The joining of a subdivided parcel of property to another parcel of property that has
444 not been subdivided does not constitute a "subdivision" under this Subsection (1)[(t)] (w) as to the
445 unsubdivided parcel of property or subject the unsubdivided parcel to the county's subdivision
446 ordinance.

447 [(t)] (x) "Unincorporated" means the area outside of the incorporated boundaries of cities
448 and towns.

449 (2) (a) A county meets the requirements of reasonable notice required by this chapter if
450 it:

451 (i) posts notice of the hearing or meeting in at least three public places within the
452 jurisdiction and publishes notice of the hearing or meeting in a newspaper of general circulation
453 in the jurisdiction, if one is available; or

454 (ii) gives actual notice of the hearing or meeting.

455 (b) A county legislative body may enact an ordinance establishing stricter notice
456 requirements than those required by this Subsection (2).

457 (c) (i) Proof that one of the two forms of notice authorized by this subsection was given
458 is prima facie evidence that notice was properly given.

459 (ii) If notice given under authority of this section is not challenged as provided in Section
460 17-27-1001 within 30 days from the date of the meeting for which the notice was given, the notice
461 is considered adequate and proper.

462 Section 11. Section **17-27-804** is amended to read:

463 **17-27-804. Plats required.**

464 (1) Unless exempt under Section 17-27-806 or not included in the definition of a
465 subdivision under Subsection 17-27-103(1), whenever any lands are divided, the owner of those
466 lands shall have an accurate plat made of them that sets forth and describes:

467 (a) all the parcels of ground divided, by their boundaries, course, and extent, and whether
468 they are intended for streets or other public uses, together with any areas that are reserved for
469 public purposes; and

470 (b) ~~[all] the lot or unit reference, the block or building reference, the street or site address,~~
471 ~~the street name or coordinate address, the acreage or square footage for all parcels, units, or lots,~~
472 ~~and the length and width of the blocks and lots intended for sale[, by numbers, and their precise~~
473 ~~length and width].~~

474 (2) (a) The owner of the land shall acknowledge the plat before an officer authorized by
475 law to take the acknowledgement of conveyances of real estate.

476 (b) The surveyor making the plat shall certify it.

477 (c) The county legislative body shall approve the plat as provided in this part. Before the
478 legislative body may approve a ~~[map or]~~ plat, the owner of the land shall provide the legislative
479 body with a tax clearance indicating that all taxes, interest, and penalties owing on the land have
480 been paid.

481 (3) After the plat has been acknowledged, certified, and approved, the owner of the land
482 shall file and record it in the county recorder's office in the county in which the lands platted and
483 divided are situated.

484 Section 12. Section **17-27-805** is amended to read:

485 **17-27-805. Subdivision approval procedure.**

486 A person may not submit a plat of a subdivision to the county recorder's office for ~~[filing~~
487 ~~or]~~ recording unless a recommendation has been received from the planning commission and:

488 (1) the plat has been approved by:

489 (a) the county's legislative body; or

490 (b) other officers that the county legislative body designates in an ordinance; and

491 (2) the approvals are entered in writing on the plat by the chief executive officer or
492 chairperson of the legislative body or by the other officers designated in the ordinance.

493 Section 13. Section **17-27-806** is amended to read:

494 **17-27-806. Exemptions from plat requirement.**

495 [~~In subdivisions of less than ten lots, land may be sold]~~

496 (1) Notwithstanding Section 10-9-804 or 10-9-805, a person may submit to the county
497 recorder's office for recording a document that subdivides property by metes and bounds into less
498 than ten lots, without the necessity of recording a plat, if:

499 [~~(1) a recommendation has been received from]~~

500 (a) the planning commission, if required by county ordinance, has given the county
501 legislative body its recommendation, whether favorable or not;

502 [~~(2) the deed contains a stamp or other mark indicating that the subdivision has been~~
503 ~~approved by:]~~

504 (b) the document contains a certificate or written approval from:

505 [~~(a)~~] (i) the county's legislative body; or

506 [~~(b)~~] (ii) other officers that the county legislative body designates in an ordinance;

507 [~~(3)~~] (c) the subdivision is not traversed by the mapped lines of a proposed street as shown
508 in the general plan and does not require the dedication of any land for street or other public
509 purposes; and

510 [~~(4)~~] (d) if the subdivision is located in a zoned area, each lot in the subdivision meets the
511 frontage, width, and area requirements of the zoning ordinance or has been granted a variance from
512 those requirements by the board of adjustment.

513 (2) (a) Subject to Subsection (2)(b), a lot or parcel resulting from a division of agricultural
514 land is exempt from the plat requirements of Section 17-27-804 if the lot or parcel:

515 (i) qualifies as land in agricultural use under Title 59, Chapter 2, Part 5, Farmland
516 Assessment Act;

517 (ii) meets the minimum size requirement of applicable zoning ordinances; and

518 (iii) is not used and will not be used for any nonagricultural purpose.

519 (b) The boundaries of each lot or parcel exempted under Subsection (2)(a) shall be
520 graphically illustrated on a record of survey map that, after receiving the same approvals as are
521 required for a plat under Section 17-27-805, shall be recorded with the county recorder.

522 (c) If a lot or parcel exempted under Subsection (2)(a) is used for a nonagricultural
523 purpose, a county may require the lot or parcel to comply with the requirements of Section

524 17-27-804.

525 Section 14. Section **17-27-807** is amended to read:

526 **17-27-807. Dedication of streets.**

527 (1) [~~Maps and plats~~] Plats, when made, acknowledged, [~~filed,~~] and recorded according to
528 the procedures specified in this part, operate as a dedication of all streets and other public places,
529 and vest the fee of those parcels of land in the county for the public for the uses named or intended
530 in those [~~maps or~~] plats.

531 (2) The dedication established by this section does not impose liability upon the county
532 for streets and other public places that are dedicated in this manner but unimproved.

533 Section 15. Section **17-27-808** is amended to read:

534 **17-27-808. Vacating or changing a subdivision plat.**

535 (1) (a) Subject to Subsection (2), the county legislative body or any other officer that the
536 legislative body designates by ordinance may, with or without a petition, consider any proposed
537 vacation, alteration, or amendment of a subdivision plat, any portion of a subdivision plat, or any
538 street, lot, or alley contained in a subdivision plat at a public hearing.

539 (b) If a petition is filed, the responsible body or officer shall hold the public hearing within
540 45 days after receipt of the planning commission's recommendation under Subsection (2) if:

541 (i) the plat change includes the vacation of a public street or alley;

542 (ii) any owner within the plat notifies the municipality of their objection in writing within
543 ten days of mailed notification; or

544 (iii) a public hearing is required because all of the owners in the subdivision have not
545 signed the revised plat.

546 (2) (a) Before the county legislative body or officer designated by the county legislative
547 body may consider a proposed vacation, alteration, or amendment under Subsection (1)(a) or (6),
548 the county legislative body or officer shall refer the proposal to the planning commission for its
549 recommendation.

550 (b) The planning commission shall give its recommendation within 30 days after the
551 proposed vacation, alteration, or amendment is referred to it.

552 (3) Any fee owner, as shown on the last county assessment rolls, of land within the
553 subdivision that has been laid out and platted as provided in this part may, in writing, petition the
554 legislative body to have the plat, any portion of it, or any street or lot contained in it, vacated,

555 altered, or amended as provided in this section.

556 (4) Each petition to vacate, alter, or amend an entire plat, a portion of a plat, or a street or
557 lot contained in a plat shall include:

558 (a) the name and address of all owners of record of the land contained in the entire plat;

559 (b) the name and address of all owners of record of land adjacent to any street that is
560 proposed to be vacated, altered, or amended; and

561 (c) the signature of each of these owners who consents to the petition.

562 (5) (a) A petition that lacks the consent of all owners referred to in Subsection (4) may not
563 be scheduled for consideration at a public hearing before the responsible body or officer until the
564 notice required by this part is given.

565 (b) The petitioner shall pay the cost of the notice.

566 (6) Subject to Subsection (2), if the responsible body or officer proposes to vacate, alter,
567 or amend a subdivision plat, or any street or lot contained in a subdivision plat, they shall consider
568 the issue at a public hearing after giving the notice required by this part.

569 (7) Petitions to adjust lot lines between adjacent properties may be executed upon the
570 recordation of an appropriate deed if:

571 (a) no new dwelling lot or housing unit results from the lot line adjustment;

572 (b) the adjoining property owners consent to the lot line adjustment;

573 (c) the lot line adjustment does not result in remnant land that did not previously exist; and

574 (d) the adjustment does not result in violation of applicable zoning requirements.

575 (8) (a) The name of a recorded subdivision may be changed by recording of an amended
576 plat making that change, as provided in this section.

577 (b) Except as provided in Subsection (8)(a), the recording of a declaration or other
578 document that purports to change the name of a recorded plat is void.

579 Section 16. Section **17-27-811** is amended to read:

580 **17-27-811. Prohibited acts -- Plat void if recorded without approvals -- Penalties.**

581 (1) (a) A county recorder may not [~~file or~~] record a subdivision plat [~~of a subdivision~~
582 ~~without the approvals required by this part~~] that has not been approved by the county legislative
583 body.

584 (b) [~~Any~~] A plat of a subdivision [~~filed or~~] recorded without the [~~approvals required by~~
585 ~~this part~~] approval of the county legislative body is void.

586 (2) (a) ~~[Any]~~ An owner or agent of the owner of any land located in a subdivision, as
587 defined in this ~~[part]~~ chapter, who transfers or sells any land in that subdivision before a ~~[plan or]~~
588 plat of the subdivision has been approved and recorded as required in this part is guilty of a
589 violation of this part for each lot or parcel transferred or sold.

590 (b) The description by metes and bounds in the instrument of transfer or other documents
591 used in the process of selling or transferring does not exempt the transaction from a violation of
592 Subsection (2)(a) or from the penalties or remedies provided in this ~~[part]~~ chapter.

593 (3) (a) An owner may not submit or cause to be submitted to the county recorder's office
594 for recording a document that is contrary to the provisions of this part or an ordinance enacted
595 under the authority of this part.

596 (b) The recording of a document does not alone create a right to develop the property.

597 (c) Each development of property shall conform to the provisions of this part and any
598 ordinance enacted under the authority of this part.

599 (d) (i) A county may bring an action against an owner to require the property conform to
600 the provisions of this part or an ordinance enacted under the authority of this part.

601 (ii) An action under this Subsection (3)(d) may include an injunction, abatement, merger
602 of title, or any other appropriate action or proceedings to prevent, enjoin, or abate the violation.

603 (iii) A county need only establish the violation to obtain the injunction.

604 Section 17. Section **30-3-5** is amended to read:

605 **30-3-5. Disposition of property -- Maintenance and health care of parties and**
606 **children -- Division of debts -- Court to have continuing jurisdiction -- Custody and visitation**
607 **-- Determination of alimony -- Nonmeritorious petition for modification.**

608 (1) (a) When a decree of divorce is rendered, the court may include in it equitable orders
609 relating to the children, property, debts or obligations, and parties. The court shall include the
610 following in every decree of divorce:

611 ~~[(a)]~~ (i) an order assigning responsibility for the payment of reasonable and necessary
612 medical and dental expenses of the dependent children;

613 ~~[(b)]~~ (ii) if coverage is or becomes available at a reasonable cost, an order requiring the
614 purchase and maintenance of appropriate health, hospital, and dental care insurance for the
615 dependent children;

616 ~~[(c)]~~ (iii) pursuant to Section 15-4-6.5:

617 [(i)] (A) an order specifying which party is responsible for the payment of joint debts,
618 obligations, or liabilities of the parties contracted or incurred during marriage;

619 [(ii)] (B) an order requiring the parties to notify respective creditors or obligees, regarding
620 the court's division of debts, obligations, or liabilities and regarding the parties' separate, current
621 addresses; and

622 [(iii)] (C) provisions for the enforcement of these orders; and

623 [(d)] (iv) provisions for income withholding in accordance with Title 62A, Chapter 11,
624 Recovery Services.

625 (b) In preparing a document that conveys title to real property, the court shall comply with
626 Section 57-1-45.

627 (2) The court may include, in an order determining child support, an order assigning
628 financial responsibility for all or a portion of child care expenses incurred on behalf of the
629 dependent children, necessitated by the employment or training of the custodial parent. If the court
630 determines that the circumstances are appropriate and that the dependent children would be
631 adequately cared for, it may include an order allowing the noncustodial parent to provide child care
632 for the dependent children, necessitated by the employment or training of the custodial parent.

633 (3) The court has continuing jurisdiction to make subsequent changes or new orders for
634 the custody of the children and their support, maintenance, health, and dental care, and for
635 distribution of the property and obligations for debts as is reasonable and necessary.

636 (4) (a) In determining visitation rights of parents, grandparents, and other members of the
637 immediate family, the court shall consider the best interest of the child.

638 (b) Upon a specific finding by the court of the need for peace officer enforcement, the
639 court may include in an order establishing a visitation schedule a provision, among other things,
640 authorizing any peace officer to enforce a court ordered visitation schedule entered under this
641 chapter.

642 (5) If a petition for modification of child custody or visitation provisions of a court order
643 is made and denied, the court shall order the petitioner to pay the reasonable attorneys' fees
644 expended by the prevailing party in that action, if the court determines that the petition was without
645 merit and not asserted or defended against in good faith.

646 (6) If a petition alleges substantial noncompliance with a visitation order by a parent, a
647 grandparent, or other member of the immediate family pursuant to Section 78-32-12.2 where a

648 visitation right has been previously granted by the court, the court may award to the prevailing
649 party costs, including actual attorney fees and court costs incurred by the prevailing party because
650 of the other party's failure to provide or exercise court-ordered visitation.

651 (7) (a) The court shall consider at least the following factors in determining alimony:

652 (i) the financial condition and needs of the recipient spouse;

653 (ii) the recipient's earning capacity or ability to produce income;

654 (iii) the ability of the payor spouse to provide support;

655 (iv) the length of the marriage;

656 (v) whether the recipient spouse has custody of minor children requiring support;

657 (vi) whether the recipient spouse worked in a business owned or operated by the payor
658 spouse; and

659 (vii) whether the recipient spouse directly contributed to any increase in the payor spouse's
660 skill by paying for education received by the payor spouse or allowing the payor spouse to attend
661 school during the marriage.

662 (b) The court may consider the fault of the parties in determining alimony.

663 (c) As a general rule, the court should look to the standard of living, existing at the time
664 of separation, in determining alimony in accordance with Subsection (7)(a). However, the court
665 shall consider all relevant facts and equitable principles and may, in its discretion, base alimony
666 on the standard of living that existed at the time of trial. In marriages of short duration, when no
667 children have been conceived or born during the marriage, the court may consider the standard of
668 living that existed at the time of the marriage.

669 (d) The court may, under appropriate circumstances, attempt to equalize the parties'
670 respective standards of living.

671 (e) When a marriage of long duration dissolves on the threshold of a major change in the
672 income of one of the spouses due to the collective efforts of both, that change shall be considered
673 in dividing the marital property and in determining the amount of alimony. If one spouse's earning
674 capacity has been greatly enhanced through the efforts of both spouses during the marriage, the
675 court may make a compensating adjustment in dividing the marital property and awarding alimony.

676 (f) In determining alimony when a marriage of short duration dissolves, and no children
677 have been conceived or born during the marriage, the court may consider restoring each party to
678 the condition which existed at the time of the marriage.

679 (g) (i) The court has continuing jurisdiction to make substantive changes and new orders
680 regarding alimony based on a substantial material change in circumstances not foreseeable at the
681 time of the divorce.

682 (ii) The court may not modify alimony or issue a new order for alimony to address needs
683 of the recipient that did not exist at the time the decree was entered, unless the court finds
684 extenuating circumstances that justify that action.

685 (iii) In determining alimony, the income of any subsequent spouse of the payor may not
686 be considered, except as provided in this Subsection (7).

687 (A) The court may consider the subsequent spouse's financial ability to share living
688 expenses.

689 (B) The court may consider the income of a subsequent spouse if the court finds that the
690 payor's improper conduct justifies that consideration.

691 (h) Alimony may not be ordered for a duration longer than the number of years that the
692 marriage existed unless, at any time prior to termination of alimony, the court finds extenuating
693 circumstances that justify the payment of alimony for a longer period of time.

694 (8) Unless a decree of divorce specifically provides otherwise, any order of the court that
695 a party pay alimony to a former spouse automatically terminates upon the remarriage or death of
696 that former spouse. However, if the remarriage is annulled and found to be void ab initio, payment
697 of alimony shall resume if the party paying alimony is made a party to the action of annulment and
698 his rights are determined.

699 (9) Any order of the court that a party pay alimony to a former spouse terminates upon
700 establishment by the party paying alimony that the former spouse is cohabitating with another
701 person.

702 Section 18. Section **57-1-45** is enacted to read:

703 **57-1-45. Notice of unbuildable property required -- Remedy.**

704 (1) Except as exempted in Subsection (2), a document that conveys title to real property
705 shall state in conspicuous, boldface type and in all capital letters on the signature page the
706 following: "NOTICE: THIS PROPERTY MAY NOT BE BUILDABLE. DEVELOPMENT OF
707 THE PROPERTY IS SUBJECT TO LOCAL ZONING AND SUBDIVISION ORDINANCES."

708 (2) The requirement of Subsection (1) does not apply if the lot or parcel being conveyed:

709 (a) is a lot in a subdivision for which a plat was recorded under Section 10-9-804 or

710 17-27-804; or
711 (b) is the subject of a conveyance that has been:
712 (i) approved as required in Section 10-9-806 or 17-27-806; and
713 (ii) recorded with the recorder of the county in which the lot or parcel is located.
714 (3) The grantee named in a document that conveys title to real property that does not
715 comply with Subsection (1) may bring an action at law or equity against his grantor for damages
716 resulting from the failure to comply or other appropriate relief.
717 Section 19. Section **75-3-917** is enacted to read:
718 **75-3-917. Conveyance of real property.**
719 Each person who prepares a document that conveys title to real property shall comply with
720 Section 57-1-45.

Legislative Review Note
as of 2-8-00 5:53 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel