

## Chapter 92

### Plats and Subdivisions

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CASE CITATIONS: *Haugen v. Gleason*, (1961) 226 Or 99, 359 P2d 108.

ATTY. GEN. OPINIONS: Application to property submitted to unit ownership, 1966-68, p 69; application to condominiums, (1969) Vol 34, p 409.

#### 92.010 to 92.150

LAW REVIEW CITATIONS: 2 WLJ 461, 511-513.

#### 92.010

ATTY. GEN. OPINIONS: Conveyances requiring plat recording, 1962-64, p 125; application to several long-term leases on one parcel, 1962-64, p 188; application to cemetery plats, 1962-64, p 225; regulating partitioning other than subdividing, 1962-64, p 249; application to property submitted to unit ownership, 1966-68, p 69; application to condominiums, (1969) Vol 34, p 409.

#### 92.014

#### NOTES OF DECISIONS

A dedication of a public way is not binding on either party unless accepted. *Mathis v. Thunderbird Village, Inc.*, (1964) 236 Or 425, 389 P2d 343.

FURTHER CITATIONS: *Kropitzer v. Portland*, (1964) 237 Or 157, 390 P2d 356.

#### 92.016 to 92.048

CASE CITATIONS: *Mathis v. Thunderbird Village, Inc.*, (1964) 236 Or 425, 389 P2d 343.

#### 92.016

ATTY. GEN. OPINIONS: Application to several long-term leases on one parcel, 1962-64, p 188.

#### 92.025

#### NOTES OF DECISIONS

A recorded plat is presumed to be duly executed. *Bernard v. Willamette Box & Lbr. Co.*, (1913) 64 Or 223, 129 P 1039.

This section does not prevent the passage of title to lots sold contrary to its provisions. *Kern v. Feller*, (1914) 70 Or 140, 140 P 735.

FURTHER CITATIONS: *Milarkey v. Foster*, (1877) 6 Or 378, 25 Am Rep 531; *Schooling v. Harrisburg*, (1903) 42 Or 494, 71 P 605; *Menstell v. Johnson*, (1928) 125 Or 150, 262 P 853, 266 P 891, 57 ALR 311; *Palmer v. Wheeler*, (1971) 258 Or 41, 481 P2d 68.

ATTY. GEN. OPINIONS: Conveyances requiring plat recording, 1962-64, p 125; application to several long-term leases on one parcel, 1962-64, p 188.

#### 92.040

#### NOTES OF DECISIONS

A dedication of a public way is not binding on either party unless accepted. *Mathis v. Thunderbird Village, Inc.*, (1964) 236 Or 425, 389 P2d 343.

ATTY. GEN. OPINIONS: Minimal requirements for approval of plats, 1960-62, p 409; application to cemetery plats, 1962-64, p 225; approval of plats providing private roads, (1969) Vol 34, p 846; city jurisdiction after county adoption of subdivision regulations, (1970) Vol 35, p 410.

#### 92.042

ATTY. GEN. OPINIONS: City jurisdiction after county adoption of subdivision regulations, (1970) Vol 35, p 410.

#### 92.044

#### NOTES OF DECISIONS

Fees collected for the primary purpose of raising revenue are not within the power to regulate. *Haugen v. Gleason*, (1961) 226 Or 99, 359 P2d 108.

This section clearly delegates the power to regulate but not the power to tax. *Id.*

ATTY. GEN. OPINIONS: Authority of county surveyor to approve plat prepared in his private capacity, 1960-62, p 183; recording name change of subdivision, 1960-62, p 380; minimal requirements for approval of plats, 1960-62, p 409; authority of planning commission to require dedication of area for recreation and for a right of way, 1964-66, p 461; approval of plats providing private roads, (1969) Vol 34, p 846.

#### 92.046

ATTY. GEN. OPINIONS: Minimal requirements for approval of plats, 1960-62, p 409; regulating partitioning other than subdividing, 1962-64, p 249.

#### 92.048

CASE CITATIONS: *Smoke v. Palumbo*, (1963) 234 Or 50, 379 P2d 1007.

#### 92.050

ATTY. GEN. OPINIONS: Authority of county surveyor to approve plat prepared in his private capacity, 1960-62, p 183; minimal requirements for approval of plats, 1960-62, p 409.

## 92.060

ATTY. GEN. OPINIONS: Necessity of filing field notes and maps after 1949 amendment of ORS 209.250, 1948-50, p 283; placing survey monuments, 1960-62, p 447; application to cemetery plats, 1962-64, p 225; application to property submitted to unit ownership, 1966-68, p 69.

## 92.070

## NOTES OF DECISIONS

The owner of the property adopts the surveyor's affidavit when he files the plat. *Christie v. Bandon*, (1917) 82 Or 481, 162 P 248.

ATTY. GEN. OPINIONS: Minimal requirements for approval of plats, 1960-62, p 409; placing survey monuments, 1960-62, p 447.

## 92.080

## NOTES OF DECISIONS

It may be assumed that a plat was properly executed, even though a purported copy thereof does not contain any dedication. *Bernard v. Willamette Box & Lbr. Co.*, (1913) 64 Or 223, 129 P 1039.

The plat and accompanying writings usually indicate whether or not the owner has the requisite intent to dedicate. *McCoy v. Thompson*, (1917) 84 Or 141, 164 P 589.

## 92.090

ATTY. GEN. OPINIONS: Conflicting names for additions, 1926-28, p 266; recording name change of subdivision, 1960-62, p 380; application to cemetery plats, 1962-64, p 225; approval of plats providing private roads, (1969) Vol 34, p 846.

## 92.100

## NOTES OF DECISIONS

There is an acceptance of the streets and roads shown on a plat when the county court indorses its acceptance of the plat thereon following the approval of the surveyor and the assessor. *Whitney v. Crittenden*, (1924) 112 Or 278, 229 P 378.

FURTHER CITATIONS: *Haugen v. Gleason*, (1961) 226 Or 99, 359 P2d 108.

ATTY. GEN. OPINIONS: Procedure if no county surveyor, 1926-28, p 215; procedure and time restrictions for conversion of public highways into county roads, 1948-50, p 355; county courts' power to make their approval of plats conditional, 1948-50, p 444; interpreting "to conform," 1950-52, p 335; authority of county surveyor to approve plat prepared in his private capacity, 1960-62, p 183; minimal requirements for approval of plats, 1960-62, p 409; placing survey monuments, 1960-62, p 447; deputy surveyor approval of subdivision plat made by county surveyor in his private capacity, 1962-64, p 6; authority to charge additional fee, 1962-64, p 150; establishment of a county road by public use and maintenance by county for over 10 years, 1966-68, p 326.

LAW REVIEW CITATIONS: 20 OLR 111.

## 92.120

## NOTES OF DECISIONS

An unacknowledged plat is not entitled to recordation, and even though it is recorded it does not operate as a

statutory dedication. *Nodine v. Union*, (1903) 42 Or 613, 72 P 582.

A recorded plat is presumed to be properly executed. *Bernard v. Willamette Box & Lbr. Co.*, (1913) 64 Or 223, 129 P 1039.

ATTY. GEN. OPINIONS: Authority of county surveyor to approve plat prepared in his private capacity, 1960-62, p 183.

## 92.140

ATTY. GEN. OPINIONS: Recording name change of subdivision, 1960-62, p 380.

## 92.150

## NOTES OF DECISIONS

1. Dedication generally
2. Statutory dedication
3. Common law dedication
4. Acceptance
5. Loss of rights in dedicated property

## 1. Dedication generally

The fee to dedicated land remains in the dedicator and passes to the purchasers of adjoining lots in accordance with the intent of the transferor. *McQuaid v. Portland & V. Ry.*, (1889) 18 Or 237, 22 P 899; *Huddleston v. Eugene*, (1899) 34 Or 343, 55 P 868, 43 LRA 444.

The sale and conveyance of lots according to a recorded plat implies a covenant that the public places designated thereon shall never be appropriated to a use inconsistent with that shown on the map. *Steel v. Portland*, (1892) 23 Or 176, 31 P 479; *Christian v. Eugene*, (1907) 49 Or 170, 89 P 419; *Menstell v. Johnson*, (1928) 125 Or 150, 262 P 853, 266 P 891, 57 ALR 311.

Statutory dedication operates by way of grant while common law dedication depends upon the principles of estoppel for its efficacy. *McCoy v. Thompson*, (1917) 84 Or 141, 164 P 589; *Menstell v. Johnson*, (1928) 125 Or 150, 262 P 853, 266 P 891, 57 ALR 311.

The warranty referred to in this section does not become operative or binding until there has been an acceptance of the use. *McQuaid v. Portland & V. Ry.*, (1889) 18 Or 237, 22 P 899.

## 2. Statutory dedication

The sale of lots with reference to a properly executed and recorded plat constitutes an irrevocable dedication of the areas on the plat designated for public use. *Carter v. Portland*, (1873) 4 Or 339; *Meier v. Portland Cable Ry.*, (1888) 16 Or 500, 19 P 610, 1 LRA 856; *Steel v. Portland*, (1892) 23 Or 176, 31 P 479; *Spencer v. Peterson*, (1902) 41 Or 257, 68 P 519, 1108; *Schooling v. City of Harrisburg*, (1903) 42 Or 494, 71 P 605; *Nodine v. Union*, (1903) 42 Or 613, 72 P 582; *Oregon City v. Ore. & Calif. R. R. Co.*, (1904) 44 Or 165, 74 P 924; *McCoy v. Thompson*, (1917) 84 Or 141, 164 P 589.

In determining what area the owner intended to dedicate to the public and the purpose of the dedication, the court should give great weight to the markings on the plat. *Heiple v. Portland*, (1885) 13 Or 97, 8 P 907; *Steel v. Portland*, (1892) 23 Or 176, 31 P 479; *McCoy v. Thompson*, (1917) 84 Or 141, 164 P 589.

The recordation of a plat is not equivalent to a conveyance of land to the public unless the plat is properly executed and acknowledged. *Lewis v. Portland*, (1893) 25 Or 133, 35 P 256, 42 Am St Rep 772, 22 LRA 736; *Nodine v. Union*, (1903) 42 Or 613, 72 P 582; *Christian v. Eugene*, (1907) 49 Or 170, 89 P 419.

An attempt by a subdivider to alter or amend his plat

is void as to persons who have purchased lots in the area. *Miller v. Fisher*, (1918) 90 Or 111, 174 P 1152.

Statutory dedication can be employed to establish building restrictions on private property if the dedicator marks the recorded plat in such manner that an intent to benefit the general public is manifested. *Menstell v. Johnson*, (1928) 125 Or 150, 262 P 853, 266 P 891.

When the owner of the locus in quo and a third person properly executed and recorded separate plats under the same name, the owner did not dedicate land reserved for public use on the third person's plat by selling lots with reference to the plat by name. *Lewis v. Portland*, (1893) 25 Or 133, 150, 35 P 256, 42 Am St Rep 772, 22 LRA 736.

### 3. Common law dedication

When there is no effective statutory dedication due to a defect in the execution of the plat, a dedication may be consummated by the sale of lots with reference to the plat. *Carter v. Portland*, (1873) 4 Or 339; *Hogue v. City of Albina*, (1890) 20 Or 182, 25 P 386, 10 LRA 673; *Nodine v. Union*, (1903) 42 Or 613, 72 P 582; *Oregon City v. Ore. & Calif. R.R. Co.*, (1904) 44 Or 165, 74 P 924; *McCoy v. Thompson*, (1917) 84 Or 141, 164 P 589; *Nicholas v. Title & Trust Co.*, (1916) 79 Or 226, 154 P 391.

An offer to dedicate can be made by parol if there are acts clearly evincing an intent to dedicate the land to public use. *Carter v. Portland*, (1873) 4 Or 339; *Hogue v. City of Albina*, (1890) 20 Or 182, 25 P 386, 10 LRA 673; *Lewis v. Portland*, (1893) 25 Or 133, 35 P 256, 42 Am St Rep 772, 22 LRA 736.

There can be a dedication to public use of an area plainly indicated on the plat as a lot, if the subdivider sells an adjoining lot on the representation that the former was being reserved for use as a street. *Morse v. Whitcomb*, (1909) 54 Or 412, 102 P 788, 103 P 775, 135 Am St Rep 832.

Permitting the public to occasionally use uninclosed property is not sufficient to raise an estoppel in pais necessary to constitute a common law dedication. *Portland Ry., Light & Power Co. v. Oregon City*, (1917) 85 Or 574, 166 P 932.

A common law dedication was not effected when the owner sold lots with reference to a map slightly variant from the recorded plat. *Hogue v. City of Albina*, (1890) 20 Or 182, 25 P 386, 10 LRA 673.

### 4. Acceptance

Formal acceptance by the corporate authorities of a dedication by parol is not necessary. *Carter v. Portland*, (1873) 4 Or 339; *Whitney v. Crittenden*, (1924) 112 Or 278, 229 P 378.

Purchase of lots shown on the plat amounts to acceptance of the areas thereon dedicated to the public. *Christian v. Eugene*, (1907) 49 Or 170, 89 P 419; *Silverton v. Brown*, (1912) 63 Or 418, 128 P 45.

Neither confirmatory declaration nor immediate improvement is necessary to secure to a municipal corporation the benefits of dedication. *McCoy v. Thompson*, (1917) 84 Or 141, 164 P 589.

### 5. Loss of rights in dedicated property

A municipal corporation does not lose its rights to land set aside for public use on a recorded plat, unless it is guilty of laches which raises an estoppel in pais. *Schooling v. City of Harrisburg*, (1903) 42 Or 494, 71 P 605; *Oliver v. Synhorst*, (1906) 48 Or 292, 86 P 376, 7 LRA(NS) 243; *Barton v. Portland*, (1914) 74 Or 75, 144 P 1146; *Dabney v. Portland*, (1928) 124 Or 54, 263 P 386.

Adverse possession of land duly dedicated to public use as a street is by itself insufficient to revest title thereto in the dedicator. *Oliver v. Synhorst*, (1906) 48 Or 292, 86 P 376, 7 LRA(NS) 243; *Christian v. Eugene*, (1907) 49 Or 170, 89 P 419; *Barton v. Portland* (1914) 74 Or 75, 144 P 1146; *Killam v. Multnomah County*, (1931) 137 Or 562, 4 P2d 323.

An estoppel was raised when the city permitted an encroachment to remain on public land for the period of the statute of limitations. *Nicholas v. Title & Trust Co.*, (1916) 79 Or 226, 154 P 391, Ann Cas 1917A, 1149.

Laches was not found when a city failed to create a street on land set aside for that purpose on the plat, before its construction was necessary. *Barton v. Portland*, (1914) 74 Or 75, 144 P 1146.

ATTY. GEN. OPINIONS: Effect of dedication on a mortgage, 1924-26, p 395; when acceptance is needed, 1930-32, p 584.

LAW REVIEW CITATIONS: 20 OLR 111.

#### 92.210 to 92.390

ATTY. GEN. OPINIONS: Applicability to development composed of individual ownerships within a commonly owned area, 1964-66, p 312; application to condominiums, (1969) Vol 34, p 409; application to sales executed in foreign countries, (1970) Vol 34, p 1022.

LAW REVIEW CITATIONS: 3 WLJ 123, 452-478.

#### 92.230

ATTY. GEN. OPINIONS: Application to condominiums, (1969) Vol 34, p 409.

#### 92.300

ATTY. GEN. OPINIONS: Refunding excess advanced, 1962-64, p 317.

#### 92.390

ATTY. GEN. OPINIONS: Refunding excess advanced, 1962-64, p 317.

#### 92.990

ATTY. GEN. OPINIONS: Conveyances requiring plat recording, 1962-64, p 125.