



**Office of the Attorney General
State of Texas**

DAN MORALES
ATTORNEY GENERAL

February 26, 1996

The Honorable Romero Molina
Starr County Attorney
P.O. Box 1198
Rio Grande City, Texas 78582

Letter Opinion No. 96-020

Re: Whether a county clerk may refuse to record a warranty deed or other conveyance of real estate that is described by reference to a subdivision the plat for which has not been approved or recorded as required (ID# 31535)

Dear Mr. Molina:

As Starr County Attorney, you ask

[w]hether a County clerk may refuse to file a warranty deed, deed of trust, or extension of deed of trust, tendered for filing and recordation by a grantee, when the subject real estate is described by block and lot number or by a metes and bounds description, and when the real estate lies in a subdivision whose plat has not been approved or filed as per Local Government Code [section] 232.001(f).

We note that subsection (f) of section 232.001, Local Government Code, to which you refer in your question, imposed platting requirements specific to subdivisions in "affected counties." Subsection (f) was repealed in 1995 by the bill which added a new subchapter B to chapter 232, making more extensive requirements as to subdivisions in such counties. Act of May 27, 1995, 74th Leg., R.S., ch. 979, §§ 4 (adding new subch. 232), 29 (repealer), 1995 Tex. Sess. Law Serv. 4895, 4896-4906. Section 232.021 defines "affected county" as a county within 50 miles of an international border, such as Starr County, and with certain levels of per capita income and unemployment. We note, too, that other 1995 legislation also addressed the problems of inadequate planning and provision of services to subdivisions, or "colonias," in economically distressed areas. Act of May 27, 1995, 74th Leg., R.S., ch. 994, 1995 Tex. Sess. Law Serv. 4982. However, in response to your question, despite the new legislation in this area, we still find no provision which would permit a county clerk to refuse to record a deed which meets the requirements of Property Code section 12.001 even if it is determined that the deed refers to a subdivision for which a plat has not been approved and recorded as required.

Property Code section 12.001 provides in relevant part:

(a) An instrument concerning real or personal property may be recorded if it has been acknowledged, sworn to with a proper jurat, or proved according to law.

(b) An instrument conveying real property may not be recorded unless it is signed and acknowledged or sworn to by the grantor in the presence of two or more credible subscribing witnesses or acknowledged or sworn to before and certified by an officer authorized to take acknowledgments or oaths, as applicable.

Attorney General Opinion C-695 concluded that in accepting a deed for recording, the county clerk could impose no further requirements than those now set out in section 12.001. Attorney General Opinion C-195 (1966) at 2. When this office was later asked to reconsider this conclusion of Attorney General Opinion C-695, it stated, in Attorney General Opinion JM-508, that the former opinion “remains a correct statement of the law in regard to the clerk’s duty to record instruments.” Attorney General Opinion JM-508 (1986) at 3. We believe this still to be the case.

Attorney General Opinion C-695 noted that various provisions then in place required that subdivision *plats*, as distinct from *deeds* to tracts in subdivisions, be properly approved before they could be accepted by the clerk for recording. Attorney General Opinion C-195 (1966) at 2-3. The opinion concluded that, although other provisions prohibited and provided penalties for person’s conveying tracts with reference to subdivisions for which plats had not been approved and recorded as required, there were no provisions which could be read to permit the clerk to refuse to record a deed which referred to such an unplatted, unapproved subdivision. *Id.* at 2.

The requirements, referred to in Attorney General Opinion C-695, regarding approval of subdivision plats prior to recording remain on the books and have indeed proliferated. *See* Local Gov’t Code §§ 232.001 (requirement that subdividers prepare and record plats), .021 - .042 (requirements for subdivision plats under chapter 232, subchapter B, which are specifically applicable to “affected counties”); *see also id.* §§ 232.002 (plat required by section 232.001 must be approved by commissioners court), .024 (plat required by subchapter B for “affected county” must be approved by commissioners court); Prop. Code § 12.002(a) (requirements that clerk with whom subdivision plat is filed must determine whether plat is required to be approved by a county or municipal authority and that clerk may not file plat subject to such requirements without requisite approval), (b) (person may not file plat without requisite approval). The prohibition, referenced in Attorney General Opinion C-695, on a person’s conveying property by a deed referring to a subdivision which has not been approved and recorded as required is now found in Property Code section 12.002(c). *See also* Local Gov’t Code § 232.031 (subdivider in “affected county” may not sell or lease land in subdivision without plat having been approved by commissioners court). Currently, subsection (e) of section 12.002 provides criminal penalties for persons filing unapproved plats in violation of subsection (b) or conveying tracts referring to unapproved subdivisions in violation of subsection (c). *See also* Local Gov’t Code § 232.036 (criminal penalties for subdivider not filing plat in “affected county,” causing residences in such unapproved subdivision to be inhabited, or selling or leasing tracts without required utility services). We note too, that Local Government Code section 192.0015 provides now that “[i]n recording a *plat* or *replat* of a subdivision of real property, the county clerk and a deputy of the clerk are

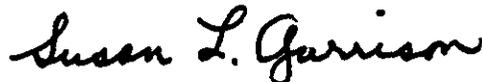
subject to the requirements and prohibitions established by Section 12.002, Property Code.” (Emphasis added.)

In our opinion, with respect to the filing of deeds as distinct from plats, the relevant provisions still do not override or add requirements to the provisions of section 12.001, Property Code, that instruments with the proper acknowledgments and signatures “may be recorded.” Even if the clerk determines that a deed refers to a subdivision for which there has not been a plat approved and recorded as required, the clerk may not refuse to record it when tendered if it meets the requirements of section 12.001, unless so ordered by a court. *See* Local Gov’t Code §§ 232.037 (local prosecutor or attorney general may take action necessary to enjoin violation or threatened violation of chapter 232, subchapter B, subdivision requirements with respect to “affected county”). Of course, if the clerk determines that the deed in question refers to a subdivision for which a plat has not been approved and recorded, in violation of Property Code section 12.002 (b) and (e), or subchapter B, chapter 232, Local Government Code, with respect to an “affected county,” the clerk may wish to apprise the appropriate prosecutor, or the attorney general, of the possibly illegal conveyance.¹

S U M M A R Y

A county clerk may not refuse to record a deed presented for filing which meets the acknowledgment, signature, and other requirements of Property Code section 12.001 unless so ordered by a court, even if the deed is determined to violate section 12.002(c), Property Code by referring to a subdivision for which there has not been a plat approved and recorded, or the requirements of chapter 232, subchapter B, Local Government Code, with respect to subdivisions in “affected counties.”

Yours very truly,



Susan L. Garrison
Assistant Attorney General
Opinion Committee

¹Although a conveyance of property that results in a subdivision of that property can be recorded in the county records, it is important to emphasize that recordation of a deed does not validate or otherwise “make legal” the creation of a subdivision by conveyance for which a plat has not been filed as required under the Local Government Code. Thus, for a sale which creates a subdivision of property as defined by statute to be legal, a plat must be filed which meets all the requirements of the Model Subdivision Rules and the related provisions of the Local Government Code. *See* Local Gov’t Code §§ 232.001(a), .023(a). It is by requiring the filing of a plat that affected counties can obtain compliance with the Model Subdivision Rules and Local Government Code. In summary, if the division of property falls within the provisions of the Local Government Code requiring plats, a county must obtain a plat satisfying the Model Subdivision Rules and the Local Government Code.