

MASON'S MINNESOTA STATUTES

1927

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THE GENERAL STATUTES OF 1923

EMBRACING THE ORGANIC LAWS, THE CONSTITUTION, AND THE STAT-
UTES CONTAINED IN THE GENERAL STATUTES OF 1923, EXCEPT
THOSE WHICH HAVE BEEN REPEALED OR SUPERSEDED
BY THE SUBSEQUENT LEGISLATION OF 1925
AND 1927

AND ALSO EMBRACING LAWS OMITTED FROM THE GENERAL STATUTES
1923, AND THE LAWS OF THE 1925 AND 1927 SESSIONS OF THE
LEGISLATURE UNDER APPROPRIATE CLASSIFICATION.

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CHAPTER 64

PLATS

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Sec. the survey, that all distances are correctly shown on the plat, that the monuments for guidance of future surveys have been correctly placed in the ground as shown, that the outside boundary lines are correctly designated on the plat, and that the topography of the land is correctly shown on the plat. If there are no wet lands or public highways to be designated in accordance with section 1 [8237] of this act, he shall so state. The certificate shall be sworn to before any officer authorized to administer an oath. The plat shall, except in cities whose charters provide for official supervision of plats by municipal officers or bodies, together with an abstract and certificate of title be presented for approval to the council of the city or village in which the land is located; and, if the land is located outside the limits of any city, incorporated village, then to the board of county commissioners of the county in which the land is located. If the council or board to whom the plat has been presented have any reason to doubt the accuracy of the same, they may, after having notified the proprietor to that effect, employ a competent surveyor to check and verify the surveys and plat, and the surveyor shall make a full report of his findings. If the survey or plat is found incorrect, the expense of verifying the same shall be paid by the proprietor, but if the survey and plat is found to be correct, then this expense shall be paid by the city, village or county to whose council or board the plat has been presented for approval. When the plat has been approved, it shall so be certified to by the city clerk, village recorder, or county auditor, as the case may be. (R. L. § 3367, amended '07 c. 438 § 2) [6857]

8236. Platting of land—Donations—Plats of land may be made in accordance with the provisions of this chapter, and, when so made and recorded, every donation to the public or any person or corporation noted thereon shall operate to convey the fee of all land so donated, for the uses and purposes named or intended, with the same effect, upon the donor and his heirs, and in favor of the donee, as though such land were conveyed by warranty deed. Land donated for any public use in any municipality shall be held in the corporate name in trust for the purposes set forth or intended. (3365) [6855]

8-456, 405; 10-82, 59; 11-119, 75; 12-546, 458; 17-260, 237; 17-265, 243; 21-493; 22-251; 44-281, 46+358; 46-321, 48+1129; 50-551, 52+931; 110-228, 124+1096; 110-276, 124+373, 125+262, 778; 117-20, 134+298; 140-435, 168+189.

8237. Survey and plat—Monument—Rivers, lakes, etc.—The land shall be surveyed and a plat made setting forth and naming all thoroughfares, showing all public grounds, and giving the dimensions of all lots, thoroughfares and public grounds. All in-lots shall be numbered progressively, by the block in which they are situated, all blocks shall be numbered progressively, and all out-lots shall be numbered progressively and shall not exceed ten acres in size. At least three iron or stone monuments shall be placed at some corners in the ground, in such way that the lines between said monuments form two or more base lines from which to make future surveys. The monuments and the angles between said base lines shall be shown on the plat, as well as the north and south line. All rivers, streams, creeks, lakes, ponds, swamps, and all public highways and thoroughfares laid out, opened or traveled—existing before the platting—shall be correctly located and plainly shown and designated on the plat. (R. L. § 3366, amended '07 c. 438 § 1; '11 c. 347 § 1) [6856]

22-251.
Plat effective as dedication of street (126-456, 148+501).

8238. Dedication — Certification—Approval—Verification—On the plat shall be written an instrument of dedication, which shall be signed and acknowledged by the owner of the land. Said instrument shall contain a full and accurate description of the land platted and shall set forth what part or parts of said land is dedicated, and also to whom, and for what purpose said part or parts are dedicated. The surveyor shall certify on the plat that the plat is a correct representation of

Laws 1925, c. 92, § 1, reads as follows: "Section 1. In all cases where plats of land outside of the limits of an incorporated municipality heretofore have been duly approved by the town board of the town in which such platted lands are situated and have been duly and regularly made and filed in all respects except that there has been no approval thereof by the county board as required by Section 6857, General Statutes 1913, such plats shall be valid and lawful, notwithstanding such omissions. The originals of such plats or duly certified copies thereof made by the proper county officers shall be prima facie evidence of the facts therein stated and received as such for that purpose in all courts."

8-491, 436; 11-119, 75; 22-251; 56-259, 57+452; 62-388, 64+922; 94-25, 101+954.
Sufficiency of description of land platted (123-344, 144+150). Proof of acceptance unnecessary (126-456, 148+501). Fee in street reserved by platter (136-367, 162+454).

8239. Certain plats corrected and legalized—That in all cases where the plats or what purport to be plats of any towns or cities in this state, or of additions to or subdivisions thereof, and plats of parcels of land situated outside of any incorporated city, town or village, or copies thereof, fail to identify and show correctly, upon their face, the tract of land covered or intended to be covered thereby, the surveyors, or one of them, who laid out or surveyed the same, and, in case said surveyor or surveyors shall have died, or his or their place of abode be unknown, or he or they be unable or refuse to make or execute such certificate, one or more of the original proprietors may, within one (1) year from the passage of this act, make and file in the office of the register of deeds of the county in

which said lands are situated, a certificate duly executed and acknowledged by him or them, as deeds are to be executed or acknowledged, wherein shall be set forth a full description of the lands actually covered and intended to be covered by said plat. If such certificate be made by a proprietor or proprietors of such town, city, addition or subdivision, the same shall also be sworn to by him or them as being correct in all respects. And such certificates, so executed, acknowledged and verified, shall be recorded at length by said register of deeds in a book by him provided for that purpose, entitled, "Book of plat certificates," and said register of deeds shall, thereupon, note upon such plat and the copy thereof, filed in his office as aforesaid and referred to in such certificate and affidavit, the fact of filing such certificate, and the book and page where recorded; and he shall receive from the person offering said certificate for record the fees provided by law for similar services. And such certificate or the record thereof shall, together with such plat, be prima facie evidence, in all cases as to lands covered by said plat. ('23 c. 178 § 1)

8239-1. Certain plats corrected and legalized—Whenever any land shall heretofore have been surveyed and platted in any incorporated city or village and the same has been duly surveyed on the ground and monuments placed as required by law, and said plat has been duly recorded in the office of the Register of Deeds in the County in which said lands are situated, and all the provisions of law for the platting of said land have been complied with, save and except only that in the description of said land on said plat, the Range is erroneously given, and where such plat has been so recorded for more than fifteen (15) years, and where sales and transfers of lots have been made during all said time by express reference in the instruments of such conveyance to said plat as so recorded, and the owner of said land who caused the same to be platted makes affidavit setting forth the correct Range in accordance with the actual survey of said premises and causes the said affidavit to be recorded in the office of the Register of Deeds for the County in which said plat is recorded, then and in such case the survey of said plat as made on the premises within said village or city shall be taken to be the premises so platted and stakes and monuments actually placed on the ground in said survey shall govern and control and be taken to be the actual boundaries and description of the land so platted, and such plat and all conveyances of lots made by reference to said plats are hereby legalized. ('25, c. 114)

8239-2. Same—That in all cases where the plats or what purport to be plats of any towns or cities in this state or of additions to or subdivisions thereof, and plats or parcels of land situated outside of any incorporated city, town or village, or copies thereof, fail to identify or show correctly, upon their face, the tract of land covered or intended to be covered thereby, the surveyors, or one of them, who laid out or surveyed the same, and, in case said surveyor or surveyors shall have died, or his or their place of abode be unknown, or he or they be unable or refuse to make or execute such certificate, one or more of the original proprietors within one year from the passage of this act may make and file in the office of the register of deeds of the county in which said lands are situated, a certificate duly executed and acknowledged by him or them, as deeds are to be executed or acknowledged, wherein shall be set forth a full description of the lands actually covered and intended to be covered by said plat.

If such certificate be made by a proprietor or proprietors of such town, city, addition or subdivision, the same shall also be sworn to by him or them as being correct in all respects. And such certificates, so executed, acknowledged and verified, shall be recorded at length by said register of deeds in a book by him provided for the purpose, entitled "Book of plat certificates"; and said register of deeds shall, thereupon, note upon such plat and the copy thereof, filed in his office as aforesaid and referred to in such certificate and affidavit, the fact of filing such certificate, and the book and page where recorded; and he shall receive from the person offering said certificate for record the fees provided by law for similar services. And such certificates or the record thereof shall, together with such plat, be prima facie evidence, in all cases as to lands covered by said plat. ('27, c. 11)

8239-3. Record of certain plats without certificate of county auditor—Records legalized—That any plat of a village or addition thereto, or other plat of land that has for more than 15 years before the passage of this act, been executed and placed in the custody of the proper register of deeds, but the same has not been recorded, and has ever since being so placed in the custody of the proper register of deeds been in his office and official custody, and such plat was not properly executed so as to entitle it to record at the time it was so placed in the custody of the proper register of deeds, and conveyances of lots and parcels of land embraced in such plats have since the execution of such plats been made and recorded therein describing and conveying such lots and parcels of land as designated and described in such plat and the same expressly referred to in such conveyance, every such plat shall upon the request of any owner of land affected thereby or included in such plat, upon the payment of the proper fees therefor, be recorded by the register of deeds and to entitle such plat to record it shall not be necessary to have the same approved by the village council of the village affected thereby nor to have the certificate of the county auditor or county treasurer as to taxes or to have any other certificate upon such plat not on the same when so placed in the custody of such register of deeds; and such plat and the record thereof are hereby declared to be valid and of the same force and effect as if the same had been properly executed and approved and the proper certificates endorsed thereon when it was so placed in the custody of such register of deeds; provided however that the provisions of this act shall not apply to any pending litigation involving such plat or conveyances made by reference to the same. ('21, c. 211, § 1)

8240. Recording, etc.—Fees—Penalties—Every plat, when duly certified, signed, and acknowledged, as provided in the foregoing section, shall be recorded in the office of the register of deeds, and a duplicate thereof filed with the county auditor. The register shall transcribe such plat, or bind the original into the proper volume, and shall receive as his fee five cents for each lot designated in the plat in case of transcribing, and two cents for each lot when the original is bound. Any person who shall dispose of, lease, or offer to sell any land included in a plat before the same is recorded shall forfeit to the county \$25 for each lot or part of a lot so disposed of, leased or offered; and any official or person whose duty it is to comply with any of the provisions of this chapter shall forfeit not less than \$10 nor more than \$100 for each month during which compliance is delayed. All forfeitures under this chapter shall be recovered in an action brought in the name of

the county. (R. L. § 3368, amended '07 c. 438; '11 c. 347 § 2) [6858]

39-158, 39+98.
Conveyance according to plat, estoppel (103-479, 115+274).

8241. Certain village plats to be recorded—That any village plat which has been heretofore filed in the office of the register of deeds of the county in which said village is located, but not recorded, but has been and remain on file in the office of said register of deeds for more than fifteen (15) years prior to the passage of this act, shall, upon the request of any property owner whose property is affected by or included in said plat, and upon the payment of his legal fees therefor, be recorded by said register of deeds and to entitle any such plat to be so recorded, it shall not be necessary to have the same approved by the village council of such village, nor shall it be necessary to have the certificate of the recorder of such village or the county auditor of such county to or upon said plat or to have any certificate upon such plat, not on the same at the time such plat was so filed in the office of said register of deeds. ('13 c. 325 § 1) [6859]

8242. Certain village plats declared official—That in all cases in which such numerous plats have thus been made and recorded between the 15th day of September, A. D. 1887, and the 15th day of January, A. D. 1904, the last plat thus made and recorded and effecting a particular village is hereby declared to be, and is hereby made the official plat of the particular village to which it relates. ('13 c. 497 § 1) [6860]

The preamble is as follows:

"Whereas, several plats of the same village have occasionally been made and recorded in the office of the respective registers of deeds of the different counties of the state of Minnesota, and each succeeding plat of each of such villages has included all of the previously platted territory in the particular village and has added new territory thereto, and

"Whereas, confusion arises in the conveyance of property by reason of the existence of such numerous plats, now heretofore. Be it enacted by the legislature of the state of Minnesota."

8242-1. Villages may change names of plats—The village council of any village in this state, the name of which has been changed, is hereby given power and authority to change, in the manner hereinafter specified, the name of any and all plats of real estate located within the corporate limits of such village to conform to the corporate name of such village. ('27, c. 31, § 1)

8242-2. Same—Resolution for change—Filing—In case the village council determines to change the name of any such plat or plats, it shall adopt a resolution specifying the plat, the name of which is to be changed, and designating the name by which it shall thereafter be known, and a copy of said resolution, duly certified by the Clerk or Recorder of said village, shall thereupon be filed for record in the office of the Register of Deeds of the county or counties in which the real estate covered by said plat is located. ('27, c. 31, § 2)

8242-3. Same—Effect—After such a resolution has been adopted and a certified copy thereof recorded, the plat referred to therein shall thereafter be known and designated by the name specified in said resolution and all real estate embraced in said plat may thereafter be conveyed by reference to the name of the plat as changed or by reference to the name of the plat before its name was changed as the grantor may prefer. ('27, c. 31, § 3)

8243. Plats in counties having 300,000 inhabitants—That in counties which now have or which shall hereafter have a population of 300,000, or more, inhabitants, every plat when duly certified, signed and ac-

1905 [8238], shall be filed in the office of the register knowledgeable, as provided in section 3367, Revised Laws of deeds, together with a correct copy thereof, which plat and copy filed, shall be made on cloth mounted paper and shall be of two sizes, either (20x30) twenty by thirty or (30x40) thirty by forty inches in size, which plat shall be placed under the direct supervision of the register of deeds and shall be open to inspection only in the presence of the register of deeds or his representative.

And the copy thereof shall be compared and certified to by the register of deeds in the manner in which certified copies of records are issued in his office, and said copy thereof shall be bound in a proper volume for the use of the general public and anyone shall have access to and may inspect such certified copy at their pleasure. When said copy or any part thereof shall become unintelligible from use or wear or otherwise, at the request of the register of deeds it shall be the duty of the county surveyor to make a copy of the original plat under the direct supervision of the register of deeds, who shall compare the said copy, certify that it is a correct copy thereof, by proper certificate as above set forth, and it shall be bound in the volume, and under the page, and in the place of the discarded copy. The register of deeds shall receive as fee for filing said plats as aforesaid described, three cents (3c) per lot, but shall receive not less than one dollar (\$1.00) for any plat filed in his office. Any person who shall dispose of, lease, or offer to sell any land included in a plat before the same is recorded, shall forfeit to the county twenty-five dollars (\$25.00) for each lot or part of a lot so disposed of, leased or offered; and any official or person whose duty it is to comply with any of the provisions of this chapter, shall forfeit not less than ten dollars (\$10.00) nor more than one hundred dollars (\$100.00) for each month during which compliance is delayed. All forfeitures under this chapter shall be recovered in an action brought in the name of the county. ('13 c. 101 § 1) [6861]

Explanatory note—Laws '13, c. 101, § 2 (G. S. '13, § 6862) provides that the provisions of R. L. '05, § 3368, as amended by '07 c. 438 and '11, c. 347, shall not be applicable to any such county. See § 8240, herein.

8244. Notice by publication and service upon mayor, village president, or chairman of town board—Upon the application of the owner or owners of land included in any plat, and upon proof that all taxes assessed against such land have been paid, and a notice hereinafter provided for given, the district court may vacate or alter all or any part of such plat, and adjudge the title to all streets, alleys and public grounds to be in the persons entitled thereto; but streets or alleys connecting separate plats or lying between blocks or lots, shall not be vacated between such lots, blocks or plats as are not also vacated, unless it appears that the street or alley or part thereof sought to be vacated is useless for the purpose for which it was laid out. The petitioner or petitioners shall cause two weeks' published and posted notice of such application to be given, the last publication to be at least ten days before the term at which it shall be heard; and said petitioner or petitioners shall also serve personally, or cause to be served personally, notice of such application, at least ten days before the term at which said application shall be heard, upon the mayor of the city, the president of the village, or the chairman of the town board of the town where such land is situated. The court shall hear all persons owning or occupying land that would be affected by the proposed vacation,

and if, in the judgment of the court, the same would be damaged, the court may determine the amount of such damage and direct its payment by the applicant before the vacation or alteration shall take effect. A certified copy of the order of the court shall be filed with the county auditor, and recorded by the register of deeds; provided, however, that the district court shall not vacate or alter any street, alley or public ground dedicated to the public use in or by any such plat in any city, town or village organized under a charter or special law which provides a method of procedure for the vacation of streets and public grounds by the municipal authorities of such city, town or village. (R. L. '05 § 3369, '09 c. 503 § 1; '17 c. 38 § 1) [6863]

8-456, 405; 42-511, 44+535; 65-491, 67+1031; 84-392, 87+1021; 91-242, 97+977; 91-404, 98+98.

Provision as to publication in amended section, how construed. Right of county to be heard (114-230, 130+1000).

Conveyance of lot abutting on vacated street, whether title to middle of street passes to grantee (110-276, 124+373, 125+262).

Public streets and grounds are within the control of the legislature and it may confer the power to alter or vacate the same (129-307, 152+643). Judgment vacating portion of plat wherein certain property thereby damaged was not included (135-175, 160+771).

Valid. 163-439, 204+534.

In order to sustain a judgment for the vacation of a part of a street, it was permissible for the district court to receive evidence extraneous to the record that notice of the application for the judgment had been given by posting; the judgment roll containing proof of notice by publication only. 163-206, 203+593.

The word "damaged," refers to damage which could have been recovered at common law, had the acts which caused the damage been done without constitutional or statutory authority. 163-439, 204+534.

The amendment of section 3369, Rev. Laws 1905, by chapter 503, Laws 1909, did not deprive the district court of jurisdiction to vacate streets in villages organized under chapter 145, Laws 1885. The word "charter" in the first proviso, does not refer to the entire body of existing laws which provide for the organization and government of cities or villages, but is used as a synonym for "home rule charter." 163-439, 204+534.

8245. Certain plats validated—That in all cases where the record owner of real estate in this state has heretofore conveyed the same or any part thereof, by express reference in the instrument of such convey-

ance to a plat of such real estate on file in the office of the register of deeds in the county in which such real estate is situated, and a plat so referred to in said conveyance is actually of record in such register's office at the time when such conveyance is made, such record owner and all persons claiming under such record owner, shall be forever estopped from questioning the validity of such plat, notwithstanding that at the time of the execution and record thereof, title to the premises covered thereby, appears of record to have been in the name of a person or persons other than the person who executed such plat as proprietor of the premises covered thereby, and notwithstanding any irregularity or informality in the execution, acceptance or record of such plat, and in all such cases such plat shall be deemed and taken to be valid, confirmed and legalized in all respects as if actually executed and recorded by the person or persons who appear of record to have been the owners of the premises covered thereby at the time of the execution and record thereof. ('05 c. 129 § 1) [6864]

8246. To what plats applicable—This act shall apply to all plats heretofore recorded of any townsite and to any addition to any townsite and to any addition to any town, village or city within the state. ('05 c. 129 § 2) [6865]

Explanatory note—Laws '05, c. 129, § 3 (G. S. '13, § 6866) provides that "nothing herein contained shall be construed to affect the subject matter of any action or proceeding now pending in any of the courts of this state."

8246-1. Certain plats and certificates prima facie evidence—That all certificates heretofore made and recorded under the provisions of chapter twenty-five General Laws of Minnesota for the year 1891, the same being "An act relative to plats of towns and cities in this state and of additions to, and subdivisions thereof and the correction and legalization of the same," or the record of such certificates, together with the plats to which they respectively refer, shall be prima facie evidence in all cases as to the lands covered by said plats. ('07, c. 53, § 1) [6867]

CHAPTER 65

REGISTRATION OF TITLE

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1940 Supplement
To
Mason's Minnesota Statutes
1927

(1927 to 1940)
(Superseding Mason's 1931, 1934, 1936 and 1938
Supplements)

Containing the text of the acts of the 1929, 1931, 1933, 1935, 1937 and 1939 General Sessions,
and the 1933-34, 1935-36, 1936 and 1937 Special Sessions of the Legislature, both new and
amendatory, and notes showing repeals, together with annotations from the
various courts, state and federal, and the opinions of the Attorney
General, construing the constitution, statutes, charters
and court rules of Minnesota together with digest
of all common law decisions.



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Where defendant company conducted arrangements for sale of its real estate in such a manner as to permit of no other conclusion than that agent who dealt with plaintiff could make no agreement binding upon it without its approval, and the only approved agreement to pay plaintiff commissions for finding of a purchaser for a certain farm was a conditional one, plaintiff could not recover balance of commission agreed upon in absence of a showing that such condition was fulfilled. *Id.* See Dun. Dig. 1147.

Evidence sustains finding that defendant agreed to pay plaintiff real estate broker part of commission due plaintiff in connection with sale of a house to defendant, balance being paid by seller. *Markert v. M.*, 200M292, 274NW174. See Dun. Dig. 1146.

Where owner of property entered into non-exclusive contract with real estate agent and prospective purchaser became interested in property through agent's efforts and then induced third person to purchase property from owner for his benefit and to save payment of commission, there was a fraudulent and collusive interference with contract right, entitling agent to recovery of damages from purchaser and his dummy. *Johnson v. G.*, 201M629, 277NW252. See Dun. Dig. 9637.

In action to recover commission for negotiating purchase of farm, offer of deed held not to show plaintiff was entitled to recovery in absence of showing that grantors in deed were owners of property in question. *Fisher v. W.*, 202M507, 279NW270. See Dun. Dig. 1147.

Necessity of a purchaser who is ready, able, and willing to perform. 16MinnLawRev684.

3.—Unlicensed broker.

Statute of Montana, requiring that real estate brokers be licensed, held no bar to recovery for property plaintiff claims was by him sold directly to defendants. *Hopkins v. H.*, 189M322, 249NW584. See Dun. Dig. 1135, 1530.

4.—Procuring cause of contract.

A real estate broker, having no exclusive agency to sell or find a purchaser for real property, in order to be entitled to a commission, must show that he was the procuring or efficient cause of a sale for which he claims commission. *Dorgeloh v. M.*, 183M265, 236NW325. See Dun. Dig. 1149(68).

Evidence held to sustain finding that defendant agreed to compensate plaintiff for procuring a sale of real estate and that plaintiff did so procure it. *Johnson v. M.*, 183M477, 237NW22. See Dun. Dig. 1161(27).

In an action to recover a commission for finding a purchaser for real estate, the evidence held to support verdict for plaintiff. *Alton v. H.*, 184M271, 238NW482. See Dun. Dig. 1161(27).

A broker who merely finds a purchaser, without producing him to his principal, held not procuring cause of a sale. *Carney v. J.*, 187M293, 245NW367. See Dun. Dig. 1149.

5.—Transaction completed by principal.

Where a broker abandoned negotiations for sale of land, he was not entitled to a commission where principal afterwards sold to his prospect. *Dorgeloh v. M.*, 183M265, 236NW325. See Dun. Dig. 1149(68).

6.—Actions.

There was no error in admitting oral evidence that a written assignment of commission by broker was for collection only. *Alton v. H.*, 184M271, 238NW482. See Dun. Dig. 1161(26).

Whether broker agreed to reduction of agreed amount of his compensation before completion of purchase held for jury. *Forward v. B.*, 184M474, 239NW228. See Dun. Dig. 1161.

Evidence did not justify submission to jury of defense that broker, without knowledge of seller, was agent of purchaser. *Horrigan v. S.*, 187M115, 244NW545. See Dun. Dig. 1146.

CHAPTER 64

Plats

8236. Platting of land—Donations.

After revocation and abandonment, a conveyance by the plat of blocks or lots abutting the street conveyed the land to the center thereof. *Doyle v. B.*, 182M556, 235NW18. See Dun. Dig. 1059, 2653.

A statutory dedication is effective without acceptance by public. *Schaller v. T.*, 193M604, 259NW529. See Dun. Dig. 2628.

Where owner of land by suitable plat dedicates streets, alleys, and other public places to be devoted to public use, and where such dedicated street or other public place is shown by plat to have as a boundary thereto a navigable body of water, there being no indication of a contrary intention, conclusion follows that dedication was intended to enable public to have access to water for all proper public purposes. *Id.* See Dun. Dig. 2641.

Where land is platted with a river as one of boundaries and only a dedicated street intervening between platted lots fronting on said street and river, conveyance by proprietors of lots carries fee title to entire street in front of lots, and riparian rights attach to lots, subject to public easement in street. *Lamprey v. A.*, 197M112, 266NW434. See Dun. Dig. 2629.

Where there are lots of land owned by dedicator on only one side of street and he owns lots or land only up to and including street, so that street extends to boundary of his land, and he owns nothing on other side thereof, dedicator, after parting with lots bordering street, retains no further fee or interest in street, and upon vacation of street by city, fee to street reverts to lot owners who obtain title from plat or dedicator. *Id.*

If county auditor orders platting under §2219, owner must proceed in accordance with provisions of §§8236 to 8246, and if owner fails, county auditor may require county surveyor to make a plat, though he cannot dedicate streets or make certificate required of an owner. *Op. Atty. Gen.* (373B-15), Sept. 11, 1939.

8237. Survey and plat—Monument—Rivers, etc.

The finding that the plat of a town site, which contained no designation of a monument from which future surveys could be made, conformed to the statute, is not sustained. *Doyle v. B.*, 183M265, 236NW236. See Dun. Dig. 2634(82).

8238. Dedication—Certification—Approval—Etc.

Even though the plat did not conform to c. 29, Gen. Stat. 1866, it effected a common-law dedication to the public of the streets and alleys thereon designated. *Doyle v. B.*, 182M556, 235NW18. See Dun. Dig. 2646(16), 2652(33).

A reservation by dedicator of streets of exclusive right to lay and operate mains, wires, poles, and pipes, is void and of no effect. *Op. Atty. Gen.*, Nov. 21, 1931.

8239-4. Plats corrected and legalized.—That in all cases where the plats or what purport to be plats of

any towns or cities in this state of additions to or subdivisions thereof, and plats or parcels of land situated outside of any incorporated city, town or village, or copies thereof, fail to identify or show correctly, upon their face, the tract of land covered or intended to be covered thereby and the said property so platted was owned by and platted by a municipality, the surveyors, or one of them, who laid out or surveyed the same, may make or execute such certificate or the governing body of said municipality may, by resolution, authorize the Mayor and the City Clerk, together with the engineer or surveyor of said municipality, if there be one, within one year from the passage of this act to make and file in the office of the register of deeds of the county in which said lands are situated, a certificate duly executed and acknowledged by him or them, as deeds are to be executed or acknowledged, wherein shall be set forth a full description of the lands actually covered and intended to be covered by said plat.

And such certificates, so executed, acknowledged and verified, shall be recorded at length by said register of deeds in a book by him provided for the purpose, entitled "Book of Plat Certificates," and said register of deeds shall, thereupon, note upon such plat and the copy thereof filed in his office as aforesaid, such certificate and affidavit, the fact of filing such certificate, and the book and page where recorded; and he shall receive from the person offering said certificate for record, the fee provided by law for similar services. And such certificates, or the record thereof, shall, together with such plat, be prima facie evidence in all cases as to lands covered by said plat. (Act Apr. 26, 1929, c. 395.)

8239-5. Certain plats may be corrected.—That in all cases where the plats, or what purport to be plats, of any portion of the lands contained within any town, village or city of this state of additions or subdivisions thereof, which have been executed and filed in an office of any register of deeds previous to January 1st, 1915, fail to identify or correctly describe the land to be so platted or to show correctly upon

their face the tract of land intended or purported to be platted thereby, or any such plats are defective by reason of the plat and the description of the land purported to be platted thereby being inconsistent or incorrect, or there exists a defect in the execution of said plats on the part of the grantors thereof, the governing board or council of the municipality containing land so platted or purported to be so platted may authorize, within six months from the passage of this act, referring by the record book and page of such plat or plats in the office of the register of deeds to the plat or plats to be correct, the making of one or more plats which shall correctly show on the face thereof and by description the land intended to be platted, which plat or plats may vary from the original plats in description as to lots and blocks to suit the best purpose and secure the best results, and such plat or plats, in a declaration thereon, shall recite such resolution and shall identify each separate tract of land described therein with such tract of land in the purported plat or plats intended to be corrected thereby, and shall be certified by the proper officers of the municipality as to authorization and by an engineer or surveyor as to correctness, and the signatures of such persons shall be acknowledged in like manner as a deed.

Such plat or plats when so certified and acknowledged may be filed in the office of the register of deeds and the declaration thereon may be recorded at length in a "Book of Plat Certificates;" and when so filed and recorded such plat or plats and declaration together with the record thereof be prima facie evidence in all matters shown or stated therein as to the lands covered thereby.

This act shall not apply to a city whose charter provides for official supervision of plats by municipal officers, commission or board. (Act Apr. 24, 1931, c. 319.)

8239-6. Correction of errors in recorded plats.—That in all cases where the plats, or what purports to be plats, of any portion of the lands contained within any town, village or city of this state of additions or subdivisions thereof, which have been executed and filed in an office of any register of deeds previous to January 1st, 1915, fail to identify or correctly describe the land to be so platted or to show correctly upon their face the tract of land intended or purported to be platted thereby, or any such plats are defective by reason of the plat and the description of the land purported to be platted thereby being inconsistent or incorrect, or there exists a defect in the execution of said plats on the part of the grantors thereof, the governing board or council of the municipality containing land so platted or purported to be so platted may authorize within six months from the passage of this Act, referring by the record book and page of such plat or plats in the office of the register of deeds to the plat or plats to be correct, the making of one or more plats which shall correctly show on the face thereof and by description the land intended to be platted, which plat or plats may vary from the original plats in description as to lots and blocks to suit the best purpose and secure the best results, and such plat or plats, in a declaration thereon, shall recite such resolution and shall identify each separate tract of land described therein with such tract of land in the purported plat or plats intended to be corrected thereby, and shall be certified by the proper officers of the municipality as to authorization and by an engineer or surveyor as to correctness, and the signatures of such persons shall be acknowledged in like manner as a deed.

Such plat or plats when so certified and acknowledged may be filed in the office of the register of deeds and the declaration thereon may be recorded at length in a "Book of Plat Certificates;" and when so filed and recorded such plat or plats and declaration together with the record thereof shall be prima facie

evidence in all matters shown or stated therein as to the lands covered thereby.

This act shall not apply to a city whose charter provides for official supervision of plats by municipal officers, commission or board. (Act Apr. 10, 1933, c. 188.)

Act Feb. 24, 1937, c. 42, authorizes correction, within six months, of plats recorded prior to Jan. 1, 1915.

8240. Recording, etc.—Fees—Penalties.

There is no authority for change of name of an existing plat, but a new plat with a new name may be filed. Op. Atty. Gen. (18d), March 18, 1939.

8243-1. County Board to control platting of land.—The Board of County Commissioners of any county containing land adjoining a city of the first class but not included within the corporate limits of any city of the first class shall have power to control and regulate the platting of subdivisions of land and the laying out of streets and other public ways. In counties which do not contain a city of the first class the power herein granted shall not extend to lands more than five miles from the boundary of a city of the first class. (Act Apr. 18, 1929, c. 225, §1.)

8243-2. Comprehensive Plan.—In order to exercise the power conferred under this act, the Board of County Commissioners shall prepare a comprehensive Major Street Plan of the district involved, which plan shall be designated and adopted as the official Major Street Plan of the areas adjoining the City of Such plan may from time to time be amended, extended or amplified. In the preparation of the Major Street Plan and in the administration of the powers herein conferred, the Board of County Commissioners may avail itself of the assistance of the City Planning Commission of the city of the first class adjoining the areas involved. (Act Apr. 18, 1929, c. 225, §2.)

8243-3. Board to make regulations.—In exercising the powers herein conferred the Board of County Commissioners shall adopt regulations governing the platting of subdivision of lands within the areas designated. Such regulations may provide for the reasonable co-ordination of location and dimension of streets and boulevards and the location of utilities to be contained therein, the minimum width, depth and area of lots and the distance of the front building line from the streets in residence neighborhoods, the extent of the grading and drainage of streets to be required as a condition precedent to the approval of plats of subdivisions. No grades shall be established or required; such regulations which would cause a material damage to the land within the area sought to be subdivided. (Act Apr. 18, 1929, c. 225, §3.)

8243-4. To be construed as additional powers.—The powers herein conferred upon the Board of County Commissioners shall be construed as an addition to existing powers and not as an amendment to or a repeal thereof and shall be supplemental to and shall not set aside the jurisdiction over plats of subdivisions now exercised by the governing bodies of villages and municipalities located in areas within the scope of this act, provided that upon the failure of the governing body of such village or municipality and the Board of County Commissioners to concurrently approve and adopt a plat of subdivision within sixty days of the time or presentation to each respective authority the approval of the Board of County Commissioners shall be final. The Board of County Commissioners may extend the time for concurrent approval with respect to individual plats of subdivisions. (Act Apr. 18, 1929, c. 225, §4.)

8243-5. Application.—Nothing herein shall amend, repeal or affect Chapter 178, Special Laws of Minnesota, for the year 1889. (Act Apr. 18, 1929, c. 225, §5.)

8244. Notice by publication and service upon mayor, village president, etc.

Determining test as to whether property dedicated to public use is to be vacated is whether public interests

will be best served thereby. *Schaller v. T.*, 193M604, 269 NW529. See Dun. Dig. 2642.

A proceeding to vacate public grounds against a town is a special proceeding, but costs and disbursements may be taxed against unsuccessful plaintiff. *Id.* See Dun. Dig. 2198, 2239.

Procedure may be taken under this section to vacate plats on land forfeited to state. *Op. Atty. Gen.* (425b-5), July 9, 1938.

State may petition in district court for vacation of plats on tax forfeited lands. *Op. Atty. Gen.* (525), March 10, 1939.

8246-2. Definitions.—For the purpose of this act, certain terms are defined as follows:

"Subdivision" means the division of a lot, tract, or parcel of land into three or more lots, plats, sites or other divisions of land of one acre or less in area, for the purpose, whether immediate or future, of sale or of building development. It also means the division of a lot, tract, or parcel of land into two or more lots, plats, sites or other divisions of land of more than one acre and less than ten acres in area, if such subdivision provides or there is shown on a plat thereof a new street or highway. It includes resubdivision and, when appropriate to the context, relates to the process of subdividing or to the land or territory subdivided.

The term "street" includes street, avenue, boulevard, road, lane, alley, viaduct, and other ways. (Act Mar. 20, 1933, c. 93, §1.)

8246-3. City planning commissions to control platting.—The governing body of any city of the first class, having more than 35 per cent of the land area of said city unplatted land may, by ordinance, authorize and empower its city planning commission to control the platting of land. (Act Mar. 20, 1933, c. 93, §2.)

8246-4. Jurisdiction.—The territorial jurisdiction of such planning commission over the subdivision of land shall include all land located in the municipality and all land lying within 3 miles of the corporate limits of the municipality and not located in any other municipality, except that, in case of any such nonmunicipal land lying within 3 miles of more than one municipality having a planning commission, the jurisdiction of such planning commission shall terminate at a boundary line equidistant from the respective corporate limits of such municipalities. (Act Mar. 20, 1933, c. 93, §3.)

8246-5. Plats must be approved by commission.—Whenever such planning commission shall have adopted a major street plan of the territory within its subdivision jurisdiction or part thereof, and shall have filed a certified copy of such plan in the office of the register of deeds of the county in which such territory or part is located, no plat of a subdivision of land within such territory or part shall be filed or recorded until it shall have been approved by such planning commission and such approval entered in writing on the plat by the chairman or secretary of the commission. (Act Mar. 20, 1933, c. 93, §4.)

8246-6. May adopt regulations.—Before exercising the powers referred to in Section 2, the planning commission shall adopt regulations governing the subdivision of land within its jurisdiction, so as to secure a harmonious development and to provide for the coordination of streets with other streets and with the city plan and to provide for open spaces for traffic, utilities, access of fire-fighting apparatus, recreation, light and air, and for the avoidance of congestion of population, including minimum width and area of lots. Such regulations may include reasonable provisions as to the extent to which streets and other ways shall be graded and improved and to which water and sewer and other utility mains, piping or other facilities shall be installed as a condition precedent to the approval of the plat. In lieu of the completion of such improvements and utilities prior to the final approval of the plat, the city may accept a bond with surety to secure to the municipality the actual construction and installation of such improvements or utilities at a time

and according to specifications fixed by the municipality. The municipality is hereby granted the power to enforce such bond by all appropriate legal and equitable remedies.

All such regulations shall be published as provided by law for the publication of ordinances, and, before adoption, a public hearing shall be held thereon. A copy thereof shall be certified by the planning commission to the register of deeds of the county or counties in which the municipality and territory are located. (Act Mar. 20, 1933, c. 93, §5.)

8246-7. Must approve plat within forty-five days.—The planning commission shall approve or disapprove a plat within 45 days after the submission thereof; otherwise such plat shall be deemed to have been approved, and a certificate to that effect shall be issued by the commission on demand: Provided, however, that the applicant for the planning commission's approval may waive this requirement and consent to an extension of such period. The ground of disapproval of any plat shall be stated upon the records of the commission. Any plat submitted to the planning commission shall contain the name and address of a person to whom notice of a hearing shall be sent; and no plat shall be acted on by the planning commission without affording a hearing thereon. Notice shall be sent to the said address by registered mail of the time and place of such hearing not less than five days before the date fixed therefor. Every plat approved by the commission shall, by virtue of such approval, be deemed to be an amendment of or an addition to or a detail of the city plan and a part thereof. Approval of a plat by the planning commission shall be deemed the acceptance by the public of any street or other open space offered therein for dedication, but shall not impose any duty upon the governing body to maintain or improve such dedicated areas until the governing body shall have authorized maintenance or improvement of the same, in accordance with charter or other local provisions governing public expenditures for such purposes. (Act Mar. 20, 1933, c. 93, §6.)

8246-8. Not to sell until plat is approved.—Whoever, being the owner or agent of the owner of any land located within a subdivision transfers or sells or agrees to sell or negotiates to sell any land by reference to or exhibition of or by other use of a plat of a subdivision, before such plat has been approved by the planning commission and recorded or filed in the office of the county register of deeds, shall forfeit and pay a penalty of \$100 for each lot or parcel so transferred or sold or agreed or negotiated to be sold; and the description of such lot or parcel by metes and bounds in the instrument of transfer or other document used in the process of selling or transferring shall not exempt the transaction from such penalties or from the remedies herein provided. The municipal corporation may enjoin such transfer or sale or agreement by action for injunction brought in any court of equity jurisdiction or may recover the said penalty by a civil action in any court of competent jurisdiction. (Act Mar. 20, 1933, c. 93, §7.)

8246-9. Plats must be approved before filing.—The county register of deeds shall not file or record a plat of a subdivision unless such plat has the approval of the planning commission as required by law. (Act Mar. 20, 1933, c. 93, §8.)

8246-10. Street improvements.—The municipality shall not accept, lay out, open, improve, grade, pave, curb, or light any street, or lay or authorize water mains or sewers or connections to be laid, in any street, within any portion of territory for which the planning commission shall have adopted a major street plan, unless such street (a) shall have been accepted or opened as or shall otherwise have received the legal status of a public street prior to the adoption of such plan, or unless such street (b) is a street on a subdivision plat approved by the planning commission or a

street on a street plat made by and adopted by the commission. The city council may, however, accept any street not shown on or not corresponding with a street on an approved subdivision plat or an approved street plat, provided the ordinance accepting such street be first submitted to the planning commission for its approval and, if approved by the commission, be enacted or passed by not less than a majority of the entire membership of the council, or, if disapproved by the commission, be enacted or passed by not less than two-thirds of the entire membership of the city council. (Act Mar. 20, 1933, c. 93, §9.)

8246-11. Building restrictions.—From and after the time when the planning commission shall have adopted a major street plan of the territory within its subdivision jurisdiction or part thereof, no building shall be erected on any lot within such territory or part, nor shall a building permit be issued therefor unless the street giving access to the lot upon which such building is proposed to be placed (a) shall have been accepted or opened as or shall otherwise have received the legal status of a public street prior to that time, or unless such street (b) corresponds with a street shown on the city plan or with a street on a subdivision plat approved by the planning commission or with a street accepted by the city council, after submission to the planning commission, by the favorable vote required in Section 9 of this act. Any building erected in violation of this section shall be deemed an unlawful structure, and the building inspector or other appropriate official may cause it to be vacated and have it removed. (Act Mar. 20, 1933, c. 93, §10.)

8246-12. Inconsistent acts repealed.—Platting control by the planning commission, as provided in this act, shall be exclusive within the territory under its jurisdiction, and all statutory control over plats or subdivision of land granted by other statutes, insofar as inconsistent with the provision of this act, are hereby repealed. (Act Mar. 20, 1933, c. 93, §11.)

8246-13. May appeal to District Court.—Any person or persons jointly or severally aggrieved by any decision of the planning commission concerning such

plat, or any officer, department, board or bureau of the municipality, may present to the district court a petition, duly verified, setting forth that such decision is illegal, in whole or in part, specifying the grounds of the illegality. Such petition must be presented to the court within thirty days after the filing of the decision in the office of the planning commission.

Upon the presentation of such petition, the court may allow a writ of certiorari directed to the planning commission to review such decision of the planning commission and shall prescribe therein the time within which a return thereto must be made and served upon the relator's attorney, which shall not be less than ten days and may be extended by the court. The allowance of the writ shall stay proceedings upon the decision appealed from.

The planning commission shall not be required to return the original papers acted upon by it, but it shall be sufficient to return certified or sworn copies thereof or of such portions thereof as may be called for by such writ. The return must concisely set forth such other facts as may be pertinent and material to show the grounds of the decision appealed from and must be verified.

If, upon the hearing, it shall appear to the court that testimony is necessary for the proper disposition of the matter, it may take evidence or appoint a referee to take such evidence as it may direct and report the same to the court with his findings of fact and conclusions of law, which shall constitute a part of the proceedings upon which the determination of the court shall be made. The court may reverse or affirm, wholly or partly, or may modify the decision brought up for review.

Costs shall not be allowed against the commission, unless it shall appear to the court that it acted with gross negligence or in bad faith or with malice in making the decision appealed from.

All issues in any proceeding under this section shall have preference over all other civil actions and proceedings. (Act Mar. 20, 1933, c. 93, §12.)

Sec. 13 of Act Mar. 20, 1933, cited, provides that the act shall take effect from its passage.

CHAPTER 65

Registration of Title

REGISTRATION

8247. Registration.

Adverse possession. 171M410, 314NW271.
Torrens' system of land title registration. 19MinnLaw Rev519.

8248. Registered land—Adverse possession.

One obtaining new certificate under Torrens Act after purchase at mechanic's lien foreclosure had good title as against parties in possession who were not made defendants though they were claiming under unrecorded transfer from the record owner and his transferee; and a judgment in an action to which the mechanic's lien claimant or his successor was not made a party and of which the records contained no notice did not affect the title. 174M22, 213NW246.

The Torrens Law intends that all titles registered thereunder shall be free from all unregistered rights or claims except those specifically named, and unregistered deeds or contracts do not affect such titles nor create any interest in the land. 178M55, 226NW201.

The act abrogates the doctrine of constructive notice, except as to matters noted on the certificate of title, but not the effect to be given to actual notice of unregistered conveyances. 178M55, 226NW201.

Possession is not notice of rights held or claimed by the occupant. 178M55, 226NW201.

Attachments and judgments properly registered take precedence over unregistered conveyances of which the creditor had no actual notice. 178M55, 226NW201.

8249. Application—Who may make.—An application for registration may be made by any of the following persons:

First—The person or persons who singly or collectively own the land. Tenants in common shall join in the application.

Second—The person or persons who singly or collectively have the power of disposing of the land.

Third—Infants and other persons under disability, by their guardian duly appointed by the proper probate court in this state.

Fourth—A corporation, by its proper officer, or by an agent duly authorized by the board of directors.

Fifth—Any executor or administrator duly appointed by the proper probate court in this state.

Sixth—A municipal corporation, by its mayor and city clerk, in the case of a city, after a resolution duly passed by its common council so directing, and by the county auditor and chairman of the county board, in the case of a county, after a resolution passed by its county board so directing.

Seventh—Any person may make application when for at least 15 years the land has been in the adverse possession of the applicant or those through whom he claims title. (As amended Mar. 31, 1939, c. 100, §1.)

Credit unions are corporations which can legally register property under torrens system, which it has acquired through foreclosure or otherwise. Op. Atty. Gen. (53b), May 7, 1935.