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 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 knowledge. Where plaintiff paid substantial part of commission, it could recover balance of commission agreed upon in absence of showing that such condition was fulfilled. See Dun. Dig. 1141(26).

Evidence sustains finding that defendant agreed to pay plaintiff real estate broker part of commission due plaintiff in connection with sale of property. Where plaintiff, its employees, and a contractor who planned to build project, entered into contract for sale of property through plaintiff's efforts and then induced third person to purchase property from owner for his benefit, to save payment of commission, and to induce contractor whom they employed, and who was interested in property, to purchase property from plaintiff. See Dun. Dig. 1147.

Necessity of a purchaser who is ready, able, and willing to purchase before real estate broker can recover balance of commission agreed upon in absence of showing that grantor in deed were owners of property in question. Fisher v. W., 199M396, 252NW256. See Dun. Dig. 1147.

§8235. 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., 199M352, 245NW584. See Dun. Dig. 1133, 1530.

§8236. Plating of land—Donations. After revocation and abandonment, a conveyance by the grantor to area or lots, abutting the street, conveyed the land to the center thereof. Doyle v. B., 182M556, 235NW18. See Dun. Dig. 1929, 2652.

Statutory dedication is effective without acceptance by public. Schaller v. T., 193M604, 253NW25. See Dun. Dig. 2643.

Where owner of land by suitable plat dedicates streets, alleys, and parks, he is held to have dedicated to public use, and where such dedicated street or other public place is shown by plat to have as a boundary thereof a navigable body of water, there being no indication of a contrary intention, conclusion follows that such street or other public place is open to public use for all proper public purposes. Id. See Dun. Dig. 2541.

Whether such street or other public place is to be dedicated as one of public use is evidenced by the fact that such street or other public place is shown to be located in a manner so as to have due regard for the public welfare, and that such dedication is in conformity with public policy. See Dun. Dig. 1929, 2652.

§8237. Survey and plat—Monument—Rivers, etc. The finding that the plat of a town site, which contained a certain farm was a conditional one, plaintiff could not recover balance of commission agreed upon in absence of showing that such condition was fulfilled. Id. See Dun. Dig. 1147.

Evidence sustains finding that defendant agreed to compensate plaintiff for procuring a sale of real estate and real plaintiff did so procure. Johnson v. M., 183M477, 237NW22. See Dun. Dig. 1116(27).

In an action to recover a commission for finding a purchaser for real estate, the evidence held to support verdict for plaintiff. Aiton v. H., 184M571, 235NW45. See Dun. Dig. 1149(17).

§8238. 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., 183M256, 235NW35. See Dun. Dig. 1149(68).

There was no error in admitting oral evidence that a written assignment of commission by broker was for collection only. Aiton v. H., 184M571, 235NW45. See Dun. Dig. 1161(26).

Whether broker agreed to reduce of agreed amount of his compensation before completion of purchase held for jury. Forward v. E., 184M474, 235NW22. See Dun. Dig. 1161(26).

Evidence did not justify submission to jury of defense that broker, without knowledge of existence of agent of purchaser. Hornigan v. S., 187M36, 245NW44. See Dun. Dig. 1146.

CHAPTER 64

Plats

§8239. 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, by resolution, authorize the Mayor and the City Council to come together with a 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 to be kept for the purpose, entitled "Book of Plat Certificates," and said register of deeds shall, thereupon, note thereon the name of the certificate holder, and the certificate and the register of deeds shall, thereupon, note thereon the name of the certificate holder, and the 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 such 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 or of the plat or plats and declaration to be 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, 1916.

§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. City of Gen. (19a), March 8, 1926.

§8249-4. Correction of errors in recorded plats.—That in all cases where the plat, 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, 1916, 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 such plat or plats and declaration to-
will be best served thereby. Schaller v. T., 1933, 604, 259
NW2d. See Dun. Dig. 2642.
A plat to vacate public grounds against a town or
in a special proceeding, but costs and disbursements may be
and authorized by ordinance. Id. See Dun. Dig. 2129.
Procedure may be taken under this section to vacate
plats on tax forfeited lands. Op. Att'y Gen. (625), March
5, July 9, 1928.
Every plat may be set aside or disapproved by the
commission to the register of deeds of the county or coun-
ty, whichever is the county and territory in which the
municipality and territory are located. (Act Mar. 20, 1933, c.
92, §8.)
§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 divi-
sion and such approval entered in writing on the plat
filed a certified copy of such plan in the office of the
register of deeds of the county in which such territory
shall have been approved by the planning commis-
dion plat approved by the planning commission or a
plotted or part thereof, and shall have filed a certified copy of such plan in the office of the
register of deeds of the county or register of deeds of the
municipality and territory in which the municipality and territory are located. (Act Mar. 20, 1933, c.
92, §5.)
§8246-3. City planning commissions to control plat-
ing.—The governing body of any city of the first class,
having more than 25 per cent of the land area of said
city unplatted land may, by ordinance, authorize and
equip its city planning commission to control the
plating of land. (Act Mar. 20, 1933, c. 93, §1.)
§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
lying within 3 miles of the corporate limits of the municipality and not located in any other munic-
pli city having a planning commission, the jurisdiction of
such planning commission shall terminate at a bound-
dary 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 plat of subdivision of land 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 with-
which said territory or part shall be filed or recorded until
it shall have been approved by such planning commis-
sion 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 com-
mision shall adopt regulations governing the subdivi-
sion of land within its jurisdiction, so as to secure a
harmonious development and to provide for the co-
ordinating of streets with other streets within 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 public facilities shall be installed as a condition precedent to the approval of the
plat. In lieu of the completion of such improve-
ments and utilities prior to the final approval of the
plat, the city may accept a bond with surety to secure the
adoption by the municipality of 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 equi-
ble 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 commis-
sion to the register of deeds of the county or coun-
ty, whichever is the county and territory in which the
municipality and territory are located. (Act Mar. 20, 1933, c.
93, §8.)
§8246-7. Must approve plat within forty-five days.—
The planning commission shall either approve or disapprove a plat within 45 days after the submission thereof; otherwise such plat shall be deemed to have been ap-
proved, and a certificate to that effect shall be issued
by the commission on demand. Provided, however, that the applicant for the planning commission's
appro
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 commis-
sion 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
equivalent to an amendment of or an addition to a
planned city 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 im-
pose any duty upon the governing body to acquire
or improve such dedicated areas. All the governing
body shall have authorized maintenance or improve-
ment 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.—Who-
ever, 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 refer-
ce 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 registrar or recorder of such
land 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
founds in the instrument of transfer or other docu-
ment 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 agree-
ment 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 jurisdic-
tion. (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,
any part of any territory or subdivision, unless 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 or (b) is a street on a subdivision
plan, or unless such street (b) is a street on a subdivi-
sion 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, §2.)

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

CHAPTER 65
Registration of Title

REGISTRATION


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 in his defendants though they were claiming under unrecorded transfer from the record owner and his transferees; and a judgment, in an action to which the mechanic's lien or his successor was not made a party and of which the records contained no notice did not affect the title. 174M22, 215NW246.

The Torrens Law intends that all titles registered therein 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. 173M55, 226NW201.

The act abrogates the doctrine of constructive notice, except as to matters noted on the certificate of title. 173M56, 226NW201.

Possession is not notice of rights held or claimed by the occupant. 173M55, 226NW201.

Attachments and judgments properly registered take precedence over all other liens. 174M55, 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, and upon the expiration of such period 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. (582b), May 7, 1935.