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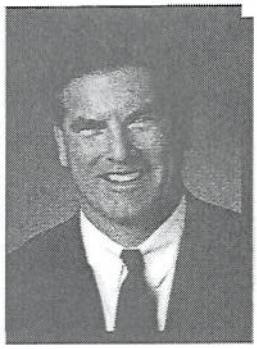
SMA Expert



Question:

I understand some counties refuse to recognize any properly filed and recorded subdivision maps if they pre-date 1929. I currently am working with a map that was properly recorded in 1914. Are the parcels shown on that map legal parcels today?

Answer:

Excellent question! In the author's opinion, yes. A bit of background may be helpful. First, we know that the California Supreme Court has determined that subdivision maps properly recorded *prior to 1893* did not themselves create legal parcels. Second, we know that most if not all jurisdictions recognize maps properly recorded *after 1929*. So, it is this period between 1893 and 1929 that is now drawing the attention of land use practitioners.

Prior to 1893, subdivision maps were recorded, but they were merely lot "descriptors," not lot "creators." Under the pre-1893 law, a lot depicted on the face of a subdivision map did not become a legal lot until it was actually *conveyed* by a deed. Those who give the year 1929 creation importance argue that conveyance is required in order to create a legal parcel for all maps properly recorded between 1893 and 1929. However, in the view of the authors, as of 1893, the Map Act did much more – a recorded subdivision map changed from being a short form lot *descriptor* to a full-fledged lot *creator*.

The Post-1893 Concept of Lot Creation by Map Recordation

Under the modern Subdivision Map Act, the post-1893 concept of lot creation by map recordation is reflected in Government Code section 66412.7. Section 66412.7 provides that a lot is created or "established" on the date that the map showing the lot is recorded with the County recorder. Those who give importance to the year 1929 give weight to the modern language of the Map Act and its use of the terms "parcel map" and "final map" as the *only* maps that when recorded create the lots shown. The term "final map" was first used by the Map Act in 1929. But California courts and the state Attorney General have concluded that other recordable maps from the early 1900s, often called "plats" or just "maps," likewise created lots upon their recordation. The key to the lawfulness of the post-1893 lots is the *recordation* of the map, not the *name* given to the recordable map. As Shakespeare's Juliet said, "What's in a name? That which we call a rose by any other word would smell as sweet." *See also* Civ. Code § 3528 ("The law respects form less than substance."). The "name" of the recordable map is form, the fact that the map is properly recorded after 1893 and depicts lots on its face is substance.

Map Act Grandfathering Provisions

Beginning in 1907 and continuing until the present day, the Map Act has always "grandfathered" older subdivisions (and the lots they created) that were properly recorded under the law in place on the date of the map's recordation. Through these grandfathering provisions, the Map Act recognizes the continuing validity of legal parcels created by properly recorded subdivision maps after 1893. With respect to subdivision maps recorded prior to 1929, the 1937 Map Act confirmed the validity of "any parcel or parcels of a subdivision of land (1) a map of which was recorded or filed *prior to August 14, 1929*, or in compliance with the provisions of Chapter 837, Statutes of 1929. . . ." (Emphasis added.)

Today, the Map Act expressly provides that the modern rules of the Map Act "do not apply to any parcel or lots of a subdivision ... sold ... in compliance with or exempt from any law (including a local ordinance), regulating the *design and improvement of subdivisions* in effect at the time the subdivision was established." Gov. Code § 66499.30(d). (Emphasis added.) Those who give importance to the year 1929 argue that the Map Act did not regulate the design and improvement of subdivisions prior to 1929. However, beginning in 1893, the Map Act required recorded maps to describe all land intended for avenues, streets, lanes, alleys, courts, commons, or other public uses and all lots intended for sale, either by number or letter, and their precise length and width, and that all land proposed for dedication as a public highway be shown. These requirements clearly are design and improvement requirements

The 1929 proponents also contend that under the Map Act, an antiquated subdivision is not established unless the subdivision map received local agency approval, and that local agencies did not obtain authority to approve subdivision maps until 1929. As stated above, Map Act section 66499.30(d) exempts from the modern subdivision rules "any parcel or lots of a subdivision ... sold ... in compliance with or exempt from any law (including a local ordinance), regulating the design and improvement of subdivisions in effect at the time the subdivision was *established*." Map Act section 66412.7 defines the term "established" for purposes of Section 66499.30(d) and, according to the 1929 proponents requires local agency approval for a subdivision to be established.

However, Section 66412.7 does not provide that local agency approval of a subdivision map is required for a subdivision to be considered established. Section 66412.7 is comprised of two parts. The first part states the simple rule that a subdivision is established when the subdivision map is properly recorded. No local agency approval is required. Local agency approval applies only to the second part of Section 66412.7, which sets forth a narrow exception to the first part.

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Moreover, in many cases, local agencies in fact approved subdivision maps prior to 1929, although the 1929 proponents do not consider these approvals to be the type of approvals contemplated by Section 66412.7.

Grandfathering Under Modern-Day Map Act Section 66451.10

Finally, modern-day Map Act section 66451.10 is another grandfathering provision. Section 66451.10 provides that:

> ... two or more contiguous lots or units of land which have been *created under* the provisions of this division, *or any prior law regulating the division of land*, or a local ordinance enacted pursuant thereto, or which were not subject to those provisions at the time of their creation, shall not be deemed merged by virtue of the fact that the contiguous lots or units are held by the same owner, *and no further proceeding under the provisions of this division or a local ordinance enacted pursuant thereto shall be required for the purpose of sale, lease, or financing of the contiguous lots or units, or any of them.* (Emphasis added.)

This section's key phrase is "created under ... any prior law regulating the division of land." The *only* requirement is that the prior law regulated the "division of land." No reasonable person could dispute that beginning in 1893, the map statutes regulated the division of land.

Conclusion – The Big Picture

Certain land use practitioners fear that the recognition of lots created by subdivision maps recorded between 1893 and 1928 will lead to rampant unregulated development. However, such fears are unfounded. The reality is that local governments have numerous tools (beyond the Map Act) to regulate the development of property, regardless of whether or not older maps created legal lots. The allowed uses of, and ability to place development on, lots is controlled by local general plans, specific plans, zoning codes, and other local regulations. Cities and counties should be relying on these planning tools, rather than misinterpretations of the Subdivision Map Act, to effectuate their policy goals.

About the Author

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